

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

~~~~~

BRYAN J. PESTA,

Plaintiff,

vs.

Case No. 1:23-cv-00546-DAP

LAURA BLOOMBERG, etc.,

et al.,

Defendants.

~~~~~

Deposition of

BRYAN J. PESTA

Volume I

January 29, 2024

10:03 a.m.

Taken at:

Perez Morris, LLC

1300 East Ninth Street, Suite 1600

Cleveland, Ohio

Cynthia Sullivan, RPR

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiff:</p> <p>4 Law Office of Frederick C.</p> <p>5 Kelly, by</p> <p>6 FREDERICK C. KELLY, ESQ.</p> <p>7 One Harriman Square</p> <p>8 Goshen, New York 10924</p> <p>9 (845) 294-7945</p> <p>10 fckellylaw@protonmail.com</p> <p>11</p> <p>12 On behalf of the Defendants:</p> <p>13 Perez Morris, by</p> <p>14 KAREN L. GIFFEN, ESQ.</p> <p>15 KERIN L. KAMINSKI, ESQ.</p> <p>16 PAUL J. NEEL, ESQ.</p> <p>17 1300 East Ninth Street</p> <p>18 Suite 1600</p> <p>19 Cleveland, Ohio 44114</p> <p>20 (216) 621-5161</p> <p>21 kgiffen@perez-morris.com</p> <p>22 kkaminski@perez-morris.com</p> <p>23 pneel@perez-morris.com</p> <p>24 ~ ~ ~ ~</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 TRANSCRIPT INDEX</p> <p>2</p> <p>3 APPEARANCES..... 2</p> <p>4</p> <p>5 INDEX OF EXHIBITS ..... 5</p> <p>6</p> <p>7 EXAMINATION OF BRYAN J. PESTA:</p> <p>8 By Ms. Giffen..... 8</p> <p>9</p> <p>10 REPORTER'S CERTIFICATE..... 305</p> <p>11</p> <p>12 EXHIBIT CUSTODY</p> <p>13 EXHIBITS RETAINED BY COURT REPORTER</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p style="text-align: right;">Page 7</p> <p>1 Exhibit 32 Plaintiff's Response to ..... 216</p> <p>2 Defendants' First Requests</p> <p>3 for Documents</p> <p>4 Exhibit 33 A Letter for Dr. Pesta from .. 227</p> <p>5 Dr. Faison and Dr. Kahn</p> <p>6 Exhibit 34 A Form 990EZ..... 228</p> <p>7 Exhibit 35 An Email String..... 239</p> <p>8 Exhibit 36 An Email String..... 269</p> <p>9 Exhibit 37 An Email String..... 279</p> <p>10 Exhibit 38 An Email String..... 282</p> <p>11 Exhibit 39 An Email String..... 292</p> <p>12 Exhibit 40 An Email String..... 293</p> <p>13 Exhibit 41 An Email String..... 297</p> <p>14 Exhibit 42 An Email String..... 303</p> <p>15 AFTERNOON SESSION..... 133</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1 reporter can't write down when we talk over</p> <p>2 each other, it's important to let me finish the</p> <p>3 question. So to finish the question, have you</p> <p>4 ever given a deposition before?</p> <p>5 A. Yes.</p> <p>6 Q. Now answer.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. In what circumstance?</p> <p>9 A. I was an expert witness for</p> <p>10 HR-related stuff, like disparate impact. This</p> <p>11 would have been in the 2000s and I think maybe</p> <p>12 early like 2012.</p> <p>13 Q. Did that involve the City of</p> <p>14 Cleveland?</p> <p>15 A. Two of them did. I think I've been</p> <p>16 an expert for five cases. Two of them were</p> <p>17 related to the City of Cleveland.</p> <p>18 Q. Okay. We may talk about those more</p> <p>19 in a minute. All right. So given that you've</p> <p>20 been through this before, then you'll know that</p> <p>21 what happens is I'll ask questions, and you'll</p> <p>22 respond. Cindy, our court reporter, will take</p> <p>23 down everything. Your attorney, Mr. Kelly, may</p> <p>24 interject when he feels it's appropriate to do</p> <p>25 so.</p>

<p style="text-align: right;">Page 10</p> <p>1 What I will tell you is I'm going 2 to do my best to ask questions that are 3 understandable. I ask you that if I've asked a 4 question that you have difficulty understanding 5 or I don't talk loudly enough or I've used a 6 word that doesn't make any sense to you, 7 please, let me know, and I'll try to rephrase 8 it; all right? 9 A. Sure. 10 Q. Second, this isn't a marathon, 11 we're going to be here for a while, but in the 12 event that you need a break for some reason, 13 I'm happy to accommodate that. I just ask that 14 you complete the question that's been posed, 15 and then we'll go off the record. 16 A. Not a problem. 17 Q. Okay. Dr. Pesta, you have some 18 materials in front of you? 19 A. Correct. I should have waited. 20 I'm sorry. 21 MR. KELLY: Catch the ball, Bryan. 22 Catch the ball before you start to run with it. 23 Q. What have you brought with you 24 today? 25 A. So one thing I copied based on I</p>	<p style="text-align: right;">Page 12</p> <p>1 documents that he brought. In there are a 2 couple copies if you want. I'm sorry. Do you 3 want me to copy them? 4 THE WITNESS: I was running out of 5 toner. I apologize. 6 MR. KELLY: I apologize. I really 7 do apologize. 8 THE WITNESS: There is nothing else 9 in here. 10 MS. GIFFEN: We're on the record. 11 Should we say something about that? 12 MR. KELLY: The record should 13 reflect I alerted Ms. Giffen last night I'm 14 starting to develop conjunctivitis/pinkeye in 15 my right eye, and I wanted to know if all 16 parties would still consent in light of that 17 with proceeding with the deposition today, and 18 it seems we are proceeding, but it may make for 19 a bit of an awkward moment at times with regard 20 to passing documents back and forth. 21 MS. GIFFEN: We'll figure it out. 22 We appreciate that heads-up notice. 23 THE WITNESS: Do you mind if I turn 24 my cell phone off? 25 MS. GIFFEN: Oh, please, do. Good</p>
<p style="text-align: right;">Page 11</p> <p>1 think it was the final report, and it was the 2 dbGaP application. I just gave that to 3 Attorney Kelly. There was also one is a 4 double-sided document that I'd like to use to 5 refresh my memory because the dates are really 6 complicated for the applications, and the other 7 has to do with expertise -- oh, the official 8 NIH data publication, and I assume that you're 9 going to get copies of these, so that's not a 10 problem. 11 Q. So let's talk about that first. So 12 I ask now when I ask you a question, don't 13 refer to any documents, but it is fine to tell 14 me I can't answer that without referring to a 15 document, and then we'll see. 16 MS. KAMINSKI: Karen, would you 17 like me to take that and get it copied since he 18 brought it in? 19 MS. GIFFEN: It's okay with me if 20 it's okay with you guys. 21 MR. KELLY: It's okay with us. 22 THE WITNESS: I don't have a 23 problem. I think I gave it to Fred, though. 24 There should be one page that's double-sided. 25 MR. KELLY: These are the two</p>	<p style="text-align: right;">Page 13</p> <p>1 reminder. 2 THE WITNESS: Okay. Thank you. 3 Q. Dr. Pesta, could you please tell us 4 whether you are currently employed? 5 A. I am not. 6 Q. And by whom were you previously 7 employed? 8 A. Cleveland State University. 9 Q. Are you married? 10 A. Divorced twice. 11 Q. I'm sorry? 12 A. Divorced twice. 13 Q. What years were you married and to 14 whom? 15 A. Her name was Michelle Oblinger, 16 O-B-L-I-N-G-E-R. I was very young, so it had 17 to be in like the 1990s. That was for three 18 years. 19 Q. For three years? 20 A. Correct. 21 Q. Okay. You said you were divorced 22 twice did you say? 23 A. Correct. So the next one was Kathy 24 McClintock. Kathy with a K. Do you want me to 25 spell that?</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. Sure.</p> <p>2 A. M-C-C-L-I-N-T-O-C-K. That was from</p> <p>3 '98 until, it was fourteen years, so it was</p> <p>4 like 2012.</p> <p>5 Q. Do you have any children?</p> <p>6 A. I have an adopted daughter from</p> <p>7 that second marriage and a biological son.</p> <p>8 Q. How old are they, and what are</p> <p>9 their names?</p> <p>10 A. Anthony is my son. He's 25.</p> <p>11 Q. Is it Anthony Pesta?</p> <p>12 A. Correct.</p> <p>13 Q. And how about your daughter?</p> <p>14 A. Krystal, K-R-Y-S-T-A-L, was Pesta,</p> <p>15 but she got married, so it's Kearny,</p> <p>16 K-E-A-R-N-Y.</p> <p>17 Q. And how old is she?</p> <p>18 A. Thirty-one.</p> <p>19 Q. Do either of those children reside</p> <p>20 with you?</p> <p>21 A. My son does, yes.</p> <p>22 Q. What is your home address?</p> <p>23 A. 26845 Chapel Hill Drive, North</p> <p>24 Olmsted, Ohio, 44070.</p> <p>25 Q. How long have you resided there?</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes, at the University of Akron.</p> <p>2 Q. Right. And you also got a</p> <p>3 postdoctorate degree of a Master in Labor</p> <p>4 Relations from CSU, right?</p> <p>5 A. Correct.</p> <p>6 Q. And your other two degrees you got</p> <p>7 at CSU, correct?</p> <p>8 A. Correct.</p> <p>9 Q. According to your CV, you became</p> <p>10 employed at CSU as a visiting assistant</p> <p>11 professor in 1998, correct?</p> <p>12 A. I was also an adjunct, but it</p> <p>13 didn't seem appropriate to put it in my vita.</p> <p>14 It's in the psych department if that's helpful.</p> <p>15 Q. So from 1998 to 2001 you were in</p> <p>16 the psych department?</p> <p>17 A. Correct.</p> <p>18 Q. Then what is term assistant</p> <p>19 professor? What does that mean?</p> <p>20 A. It's not even a distinction at CSU</p> <p>21 anymore, but it used to be you would have a</p> <p>22 one-year contract, and every year they could</p> <p>23 renew it or not, so it was a full-time temp.</p> <p>24 Q. So that was from 2001 to 2004 you</p> <p>25 were a contract professor?</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Since '25, so almost twenty</p> <p>2 years -- 2005. I'm sorry.</p> <p>3 Q. I was going to say '25? And you</p> <p>4 say that your son resides with you. Does</p> <p>5 anybody else live with you there?</p> <p>6 A. No.</p> <p>7 Q. Okay. You were kind enough to</p> <p>8 provide for us a copy of your CV in response to</p> <p>9 our request.</p> <p>10 - - - - -</p> <p>11 (Thereupon, Deposition Exhibit 1,</p> <p>12 the Curriculum Vitae of Bryan J.</p> <p>13 Pesta, Ph.D., was marked for</p> <p>14 purposes of identification.)</p> <p>15 - - - - -</p> <p>16 Q. Dr. Pesta, handing you what's been</p> <p>17 marked as Exhibit 1, could you confirm for us</p> <p>18 that this is your CV?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And it appears if we just</p> <p>21 run through this quickly -- first of all, is</p> <p>22 the information contained on Exhibit 1 correct?</p> <p>23 A. Yes.</p> <p>24 Q. All right. And you got your Ph.D.</p> <p>25 in 1997, correct?</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Correct.</p> <p>2 Q. Assistant professor I should have</p> <p>3 said. Now, this time it's of management and</p> <p>4 labor relations?</p> <p>5 A. This time meaning?</p> <p>6 Q. Previously it was assistant</p> <p>7 professor of psychology.</p> <p>8 A. Oh, correct. Yes.</p> <p>9 Q. All right. Is this when you moved</p> <p>10 over to the business school?</p> <p>11 A. Correct.</p> <p>12 Q. So let's talk about that. So when</p> <p>13 you were the professor of psychology from '98</p> <p>14 to 2001, what college were you associated, with</p> <p>15 what college?</p> <p>16 A. I know they realigned. I think it</p> <p>17 was arts and sciences back then.</p> <p>18 Q. Okay. And then how about beginning</p> <p>19 in 2001 when you became a professor of</p> <p>20 management and labor relations?</p> <p>21 A. It used to be called the -- I'm</p> <p>22 sorry. I didn't let you finish. It used to be</p> <p>23 the MLR, management and labor relations. Maybe</p> <p>24 about eight years ago it changed to just</p> <p>25 management.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. That was the department of what 2 college? 3 A. College of Business. 4 Q. I know now it's the Monte Ahuja 5 College of Business, I think? 6 A. Correct. 7 Q. Is that the right name? 8 A. Correct. 9 Q. Was it at that time? 10 A. No. It was Nance. I think he was 11 a CSU vice president or something like that. 12 Q. It changed names somewhere, but it 13 was fundamentally the College of Business 14 throughout, correct? 15 A. Yes. 16 Q. So you became an assistant 17 professor? 18 A. Well, visiting, which is full-time 19 temp, but then in 2005 or '06, I landed the 20 tenure-track job in management. 21 Q. Okay. And then 2010 to 2016 was 22 associate professor, right? 23 A. 2010 to 2016? 24 Q. Yes. 25 A. Correct.</p>	<p style="text-align: right;">Page 20</p> <p>1 intelligence research for the most part. I 2 think I picked three, and they picked two, the 3 committee. This would have been the college 4 PRC. 5 Q. Who were the three you picked? 6 A. I don't remember. I would have to 7 go back and look. It was I guess 14 years ago. 8 Q. Do you remember who the two were 9 the college picked? 10 A. I have no idea. I mean, I have it 11 at home in my computer, I think. 12 Q. That's all right. 13 A. All right. 14 Q. So now you've got tenure, you're an 15 associate professor, and then you are promoted 16 to full professor in 2016? 17 A. Correct. 18 Q. Was the review process associated 19 with becoming -- 20 A. The same deal. It's the same. I 21 don't think I went to the university on that 22 one, but it was department, college, and then I 23 was granted it, but there were external 24 reviews, also. 25 Q. And who were the external reviewers</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And you got tenure in 2010; is that 2 right? 3 A. Correct. 4 Q. When you became an associate 5 professor, that was approximately at the same 6 time you got tenure? 7 A. I think they are granted at the 8 same time. 9 Q. You went through an application 10 process and had a tenure review committee, et 11 cetera? 12 A. Yeah. It went all the way through 13 department, college, and university. 14 Q. Okay. And at that time in 2010 15 were you requested to submit to them, to the 16 tenure review committee, what publications you 17 had done and what research you were involved 18 in, et cetera? 19 A. Yes. 20 Q. Did you have recommending outside 21 academicians? 22 A. Yeah. It's external review. I 23 believe I had five. 24 Q. Who were they? 25 A. Oh, my God. People who publish in</p>	<p style="text-align: right;">Page 21</p> <p>1 for that one? 2 A. It would be -- I don't remember. I 3 would have to check. 4 Q. Okay. But same process in that you 5 would have been asked to submit to those 6 reviewing entities the work that you had done, 7 the research you were involved in, and the 8 papers that you -- 9 A. So they don't care about teaching, 10 it's all about research, so the external 11 reviewers were focused on that, but I did have 12 to submit a dossier with teaching and service 13 statements, too. 14 Q. Let's talk about that a minute. So 15 what do you understand is highly valued at 16 Cleveland State among professors? Was that too 17 vague of a question? 18 A. I'm sorry. 19 Q. You're giving me a look that tells 20 me that was too vague. 21 A. What I valued? 22 Q. No, no, no. I'll ask it more 23 directly. Were both your teaching skills and 24 your research and publication accomplishments 25 and skills, were both of those important when</p>



<p style="text-align: right;">Page 22</p> <p>1 you went through getting hired, getting 2 tenured, and getting full professor, and if you 3 need to break it down, feel free to do so. 4 A. Certainly. Also, service, like 5 serving on committees, professional service, 6 stuff like that. 7 Q. So service like within Cleveland 8 State as well as service -- 9 A. It could be outside, too. 10 Q. Okay. All right. So you'd agree 11 that all three of those things were important 12 for each of those steps? 13 A. Not equally important, but yes. 14 Q. What in your mind was given more 15 emphasis? 16 A. It's only about research. 17 Q. And what do you understand is the 18 reason for that? 19 A. Publish or perish. The university 20 gets money for -- you know, grant money and 21 stuff like that based on the faculty's 22 reputation. I think it's fairly well known 23 among professors that research gets you to the 24 next level. 25 Q. Okay. Now, you mentioned this a</p>	<p style="text-align: right;">Page 24</p> <p>1 faculty are in the now management department? 2 A. Now? 3 Q. Or when you left. 4 A. When I started there was a lot 5 more, I would say maybe 20, maybe even more 6 like in the early 2000s. When I left, just 7 full-time people, like tenure-track? 8 Q. Let's start there. 9 A. Ten or 12. 10 Q. Okay. So almost half, reduction by 11 almost half? 12 A. It wasn't -- oh, like not 13 reduction, but I'm thinking of a better word. 14 Like they left, yeah. 15 Q. Right. I didn't mean to suggest 16 they had been terminated or something, but the 17 number of faculty in the department was reduced 18 significantly? 19 A. By approximately 50 percent. 20 Q. Okay. At the time that you left, 21 where would you put yourself among your 22 colleagues in terms of the amount of research 23 and publication that you did as compared to 24 others? 25 A. Okay. That's a fair question. I</p>
<p style="text-align: right;">Page 23</p> <p>1 minute ago, and now I need to clarify this a 2 bit. You said that the department was 3 originally called management and labor 4 relations, and now it's just called management? 5 A. MGT. 6 Q. When did that change? 7 A. I'm guessing around eight years 8 ago, but I'm -- I mean, I don't know what the 9 margin of error is on that. 10 Q. No problem. Did the focus of the 11 group change when the name changed? 12 A. A little bit, yeah. That was our 13 motivating factor. Just labor relations, it's 14 picking up now which is good, but back then it 15 was almost dead. I think it was only like 16 8 percent of the labor force was even 17 unionized, and we didn't hire replacement 18 professors who had expertise in that, so we 19 just felt we needed to rebrand it and call it 20 management. 21 Q. Is there a separate labor relations 22 department now? 23 A. No. They are still with us, or 24 they are still in the management department. 25 Q. I see. I see. Okay. How many</p>	<p style="text-align: right;">Page 25</p> <p>1 won merit pay specifically for research at 2 least twice, maybe three times, more awards I 3 won for teaching. I think in my department, 4 not college, I was up there. I think there is 5 a professor named Ken Dunegan who retired. 6 He's got a good record. I think the current 7 chair, unless he left, is Timothy DeGroot, 8 D-E-G-R-O-O-T. He had a really good record. 9 So, yeah, by impact factors and 10 stuff like that and at a school like CSU, I 11 definitely deserved both promotions. 12 Q. And if you would flip to the very 13 last page of Exhibit 1, you'll see your awards 14 and honors list, and I'm seeing merit pay 15 winners. Is that what you're referring to? 16 A. Correct. And there is also this 17 legacy award, and, well, the Excellence in 18 Humanist, that's irrelevant. 19 Q. All right. Do you have any 20 academic or teaching experience outside of CSU? 21 A. So when I was a student at Akron 22 getting my Ph.D., they make you be student 23 teachers, and so I had that experience. 24 Q. Is Akron an AAUP or other union -- 25 A. Maybe five years ago, maybe ten,</p>

<p style="text-align: right;">Page 26</p> <p>1 they voted the union in.</p> <p>2 Q. Fred wants to tell you you started</p> <p>3 to answer before I finished.</p> <p>4 A. I've been good so far. I'm sorry.</p> <p>5 MR. KELLY: Let her finish the</p> <p>6 question.</p> <p>7 Q. It's okay. So the end of the</p> <p>8 question was going to be, was there a</p> <p>9 collective bargaining representative for the</p> <p>10 faculty at Akron while you were there?</p> <p>11 A. When I was there, I don't believe</p> <p>12 so, but I know they got one voted in</p> <p>13 thereafter.</p> <p>14 MR. KELLY: Just answer the</p> <p>15 question, Bryan.</p> <p>16 THE WITNESS: Okay. Thank you.</p> <p>17 Q. Okay. Next page, is this all of</p> <p>18 the classes that you taught?</p> <p>19 A. I don't include Akron because, I</p> <p>20 mean, this is a CSU thing.</p> <p>21 Q. Got it. And then there is a</p> <p>22 three-and-a-half to four-page list of</p> <p>23 publications, right?</p> <p>24 A. Correct.</p> <p>25 Q. Were all of these published?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. The -- oh, there is one. Let me</p> <p>2 see where it's at. Yeah, so I think it's</p> <p>3 number nine. But there are some authors on the</p> <p>4 paper that APA style says you list the first</p> <p>5 seven, so Woodley would be in there somewhere.</p> <p>6 Q. I see. Okay. All right. Now, one</p> <p>7 of the things that, and we'll take a look at it</p> <p>8 at some time, you submitted at various points</p> <p>9 during this process a statement with respect to</p> <p>10 your research involving intelligence?</p> <p>11 A. Correct.</p> <p>12 Q. You mentioned in there that you had</p> <p>13 been interested for a long time in that subject</p> <p>14 and also attempting to determine that research</p> <p>15 in connection with variables including race and</p> <p>16 ethnicity.</p> <p>17 A. Correct.</p> <p>18 Q. When did you become interested in</p> <p>19 that as a subject area?</p> <p>20 A. So if you look at my undergrad</p> <p>21 transcript at CSU, I took a class called Human</p> <p>22 Abilities with Professor John Burns, it was in</p> <p>23 either '89 or '90, and I was just fascinated by</p> <p>24 how powerful cognitive ability is in predicting</p> <p>25 success in life and how reliable and valid</p>
<p style="text-align: right;">Page 27</p> <p>1 A. That's the question?</p> <p>2 Q. Yes.</p> <p>3 A. You mean at CSU or just -- all of</p> <p>4 these are publications, yes.</p> <p>5 Q. All of these papers were published?</p> <p>6 A. Correct.</p> <p>7 Q. I guess what I'm really asking are</p> <p>8 any of the papers cited here only submitted for</p> <p>9 publication, but not yet published or accepted</p> <p>10 for publication?</p> <p>11 A. No. I don't like to put that stuff</p> <p>12 on my vita.</p> <p>13 Q. Okay. One of the things I note and</p> <p>14 you make reference to it in other</p> <p>15 correspondence and various notations is of a</p> <p>16 paper that you did, I think the principal</p> <p>17 author or at least the first named author was a</p> <p>18 person named Woodley, Genomic Versus</p> <p>19 Self-Identified Ancestry, and it goes on from</p> <p>20 there which was in 2018, and that was not</p> <p>21 listed. Was that paper ever published?</p> <p>22 A. I'm not familiar with it honestly.</p> <p>23 Woodley? Do you know who the other authors</p> <p>24 were?</p> <p>25 Q. You.</p>	<p style="text-align: right;">Page 29</p> <p>1 these tests are, and then there was like maybe</p> <p>2 a week lecture on group differences, and I was</p> <p>3 totally fascinated with that. But I was trying</p> <p>4 to be a cognitive psychologist at that point,</p> <p>5 so I never did research on it back then.</p> <p>6 Q. Okay. So if we take a look at the</p> <p>7 list of publications, I want to identify,</p> <p>8 because you know the nature of this much better</p> <p>9 than I do, which of the publications reference</p> <p>10 that subject area that we just discussed.</p> <p>11 A. Can I separate it by -- go ahead.</p> <p>12 MR. KELLY: Object to the form of</p> <p>13 the question. I think it's a little bit vague.</p> <p>14 What subject area are we talking about? Never</p> <p>15 mind.</p> <p>16 A. I was going to say do you want just</p> <p>17 intelligence articles or ones that focus on</p> <p>18 intelligence and race?</p> <p>19 Q. Yes. Let's focus on intelligence</p> <p>20 and race or intelligence and some other</p> <p>21 population separately.</p> <p>22 A. Sure.</p> <p>23 Q. So with that caveat, let's go</p> <p>24 through these lists. No. 1 fits, yes?</p> <p>25 A. Correct.</p>



<p style="text-align: right;">Page 30</p> <p>1 Q. No. 2, how about that one?</p> <p>2 A. Correct.</p> <p>3 Q. No. 3?</p> <p>4 A. Yes.</p> <p>5 Q. No. 4?</p> <p>6 A. Yes.</p> <p>7 Q. No. 5?</p> <p>8 A. Correct.</p> <p>9 Q. No. 6?</p> <p>10 A. Yes.</p> <p>11 Q. No. 7?</p> <p>12 A. That's the controversy here.</p> <p>13 Q. We'll spend more time talking about</p> <p>14 that one.</p> <p>15 A. Yes.</p> <p>16 Q. So yes on that one, right?</p> <p>17 A. Correct.</p> <p>18 Q. No. 8?</p> <p>19 A. Yes.</p> <p>20 Q. No. 9?</p> <p>21 A. Yes.</p> <p>22 Q. No. 10?</p> <p>23 A. No.</p> <p>24 Q. No. 11?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. No. 20?</p> <p>2 A. Yes.</p> <p>3 Q. No. 21?</p> <p>4 A. No.</p> <p>5 Q. No. 22?</p> <p>6 A. Yes.</p> <p>7 Q. No. 23?</p> <p>8 A. No.</p> <p>9 Q. No. 24?</p> <p>10 A. No.</p> <p>11 Q. No. 25?</p> <p>12 A. Yes.</p> <p>13 Q. No. 26?</p> <p>14 A. Yes.</p> <p>15 Q. No. 27?</p> <p>16 A. No.</p> <p>17 Q. No. 28?</p> <p>18 A. Yes.</p> <p>19 Q. No. 29?</p> <p>20 A. Yes.</p> <p>21 Q. Thirty?</p> <p>22 A. Yes.</p> <p>23 Q. Thirty-one?</p> <p>24 A. Yes.</p> <p>25 Q. Thirty-two?</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. No. 12?</p> <p>2 A. That's marginal. I mean, it's</p> <p>3 bibliometrics.</p> <p>4 Q. What is bibliometrics?</p> <p>5 A. It's where you study articles and</p> <p>6 authors for productivity and look for trends on</p> <p>7 who is most impactful. So it's mostly</p> <p>8 bibliometrics, but it's on the field of</p> <p>9 intelligence.</p> <p>10 Q. So put that in the maybe category?</p> <p>11 A. Maybe.</p> <p>12 Q. No. 13?</p> <p>13 A. Yes.</p> <p>14 Q. No. 14?</p> <p>15 A. Yes.</p> <p>16 Q. No. 15?</p> <p>17 A. Yes.</p> <p>18 Q. No. 16?</p> <p>19 A. No.</p> <p>20 Q. No. 17?</p> <p>21 A. Yes.</p> <p>22 Q. No. 18?</p> <p>23 A. Yes.</p> <p>24 Q. No. 19?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 33</p> <p>1 A. No.</p> <p>2 Q. No. 33?</p> <p>3 A. No.</p> <p>4 Q. Thirty-four?</p> <p>5 A. No.</p> <p>6 Q. Thirty-five?</p> <p>7 A. No.</p> <p>8 Q. Thirty-six?</p> <p>9 A. No.</p> <p>10 Q. Thirty-seven?</p> <p>11 A. No.</p> <p>12 Q. Thirty-eight?</p> <p>13 A. No.</p> <p>14 Q. Thirty-nine?</p> <p>15 A. The rest of these are not</p> <p>16 intelligence.</p> <p>17 Q. Oh, is that right? Thank you.</p> <p>18 A. Okay.</p> <p>19 Q. The rest are not on intelligence</p> <p>20 and analysis with respect to race or some other</p> <p>21 population subgroup; is that right?</p> <p>22 MS. KAMINSKI: Just so the record</p> <p>23 is clear, the numbers you are reading off of</p> <p>24 are from Exhibit 1; is that right?</p> <p>25 MS. GIFFEN: Thank you for that</p>

<p style="text-align: right;">Page 34</p> <p>1 reminder. Yes, I'm reading from Exhibit 1, and</p> <p>2 each of those numbers represent a specific</p> <p>3 publication.</p> <p>4 Q. So if I'm reading it correctly, the</p> <p>5 first publication that you had that related to</p> <p>6 that subject matter was in 2008, correct?</p> <p>7 A. There is two there that both relate</p> <p>8 to that subject matter. So page 4 starts my</p> <p>9 intelligence stream.</p> <p>10 Q. Okay. All right. Then there is,</p> <p>11 at least for the period of 2008 to 2014, about</p> <p>12 half relating to intelligence and race or some</p> <p>13 other population subgroup and about half that</p> <p>14 did not relate?</p> <p>15 A. The date was 2000 to 2014?</p> <p>16 Q. 2008 to 2014.</p> <p>17 A. That seems fair. I didn't count</p> <p>18 it.</p> <p>19 MS. KAMINSKI: There is more.</p> <p>20 Q. All right. Let's count them up. I</p> <p>21 got nine, Kerin is right, nine papers that</p> <p>22 related to that subject matter and four that</p> <p>23 did not.</p> <p>24 A. Okay.</p> <p>25 Q. Is that right?</p>	<p style="text-align: right;">Page 36</p> <p>1 No. 10, I'm sorry, but you're right. I just</p> <p>2 forgot the date. That was 2018.</p> <p>3 Q. All right. This would have been</p> <p>4 the list of publications that you would have</p> <p>5 presented, obviously it wouldn't have been this</p> <p>6 long, it would have been the publications list</p> <p>7 that you presented when you sought employment</p> <p>8 with CSU, when you sought your tenure, and when</p> <p>9 you sought your full professorship, correct?</p> <p>10 A. My memory is you could pick five,</p> <p>11 maybe seven articles that you think are most</p> <p>12 impressive, I guess, to send to the external</p> <p>13 reviewers.</p> <p>14 Q. But you would --</p> <p>15 MR. KELLY: Answer the question,</p> <p>16 Bryan.</p> <p>17 THE WITNESS: I thought I did. I'm</p> <p>18 sorry. Maybe I didn't understand it.</p> <p>19 MR. KELLY: You didn't answer her</p> <p>20 question. You volunteered.</p> <p>21 THE WITNESS: Okay. Thank you.</p> <p>22 Q. So let's take it step by step now.</p> <p>23 When you sought tenure, you certainly would</p> <p>24 have provided a list of the publications you</p> <p>25 had or the papers that you had published to</p>
<p style="text-align: right;">Page 35</p> <p>1 A. I didn't mark them, so I'd have to</p> <p>2 go back and look.</p> <p>3 Q. Then for the period 2015 to 2020,</p> <p>4 your CV is conveniently page by page noted, and</p> <p>5 you have the year.</p> <p>6 A. That's good.</p> <p>7 Q. It's much easier to read that way,</p> <p>8 so thank you. From 2015 to 2020, most of the</p> <p>9 papers except two, maybe two-and-a-half, are</p> <p>10 related to the issue of intelligence and race</p> <p>11 or some other population subgroup?</p> <p>12 A. Correct.</p> <p>13 Q. Is that right?</p> <p>14 A. Correct.</p> <p>15 Q. And then all of them were from 2021</p> <p>16 to 2023, correct?</p> <p>17 A. Could you repeat that?</p> <p>18 Q. So all of the remaining</p> <p>19 publications are related to that subject</p> <p>20 matter?</p> <p>21 A. No. I think there was one on</p> <p>22 bibliometrics. Let me check really quick. Oh,</p> <p>23 I'm sorry. You're right. Let me see here.</p> <p>24 MS. KAMINSKI: No. 12.</p> <p>25 A. There is a more recent one.</p>	<p style="text-align: right;">Page 37</p> <p>1 date, correct?</p> <p>2 A. Correct. You have to submit your</p> <p>3 CV.</p> <p>4 Q. All right. So at least the</p> <p>5 internal tenure review people would have had</p> <p>6 that list?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Now, you just mentioned</p> <p>9 that you thought maybe you wouldn't have</p> <p>10 submitted the entire list to the external</p> <p>11 reviewers.</p> <p>12 A. The list, yes; but the actual</p> <p>13 publications --</p> <p>14 Q. I see. Okay. Do you remember what</p> <p>15 publications you sent to your reviewers at each</p> <p>16 of those stages?</p> <p>17 A. Yeah. So I got that in 2010.</p> <p>18 Let's start there.</p> <p>19 Q. So it had to be what was on the</p> <p>20 possibilities list would have been 25</p> <p>21 through --</p> <p>22 A. The rest.</p> <p>23 Q. -- the rest, through 44. Do you</p> <p>24 remember which ones you submitted?</p> <p>25 A. To the external reviewers?</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Yes.</p> <p>2 A. I think the -- where is it at? I</p> <p>3 just lost it. No. 26 I'm not positive, I think</p> <p>4 it was submitted, but I thought it was a good</p> <p>5 article, so I'm pretty sure, and this is my</p> <p>6 memory.</p> <p>7 Q. Sure.</p> <p>8 A. I'm pretty sure I submitted that</p> <p>9 one, 26. I would have done the No. 30. Then,</p> <p>10 you know, I needed more purely business</p> <p>11 publications, so I'm trying to think. Let me</p> <p>12 see. So I think 32.</p> <p>13 Q. Okay.</p> <p>14 A. And maybe 36.</p> <p>15 Q. And then how about when you became</p> <p>16 a full professor which would have been 2016?</p> <p>17 A. Okay. So --</p> <p>18 Q. First of all, let's establish that</p> <p>19 what would have been on the list was items 14</p> <p>20 through the remainder of the list, yes?</p> <p>21 A. I'm wondering if any of these were</p> <p>22 in process. No, I would say you're correct.</p> <p>23 Q. All right. So that list would have</p> <p>24 been submitted to the internal reviewers and to</p> <p>25 external reviewers, but not necessarily the</p>	<p style="text-align: right;">Page 40</p> <p>1 known that you were interested in researching</p> <p>2 questions posed about intelligence or</p> <p>3 intelligence and other population subgroups;</p> <p>4 agreed?</p> <p>5 A. Well, they are expert researchers,</p> <p>6 and if you just see the names and the titles,</p> <p>7 yes, I would agree.</p> <p>8 Q. You actually wouldn't have to</p> <p>9 really read the papers to know this given what</p> <p>10 the title was of each of them?</p> <p>11 A. Maybe not all of them, but yes.</p> <p>12 Q. All right. One question that I</p> <p>13 have, if we look at page 6, Dr. Pesta, and</p> <p>14 page 6 includes your presentations to various</p> <p>15 conferences, did any of these conference</p> <p>16 presentations involve the issue of intelligence</p> <p>17 and race or intelligence and some other</p> <p>18 population subgroup?</p> <p>19 A. I've only been to two, I believe,</p> <p>20 and yes for both.</p> <p>21 Q. Which one or both?</p> <p>22 A. We're on page 16. The first one I</p> <p>23 don't have a number.</p> <p>24 Q. Could you tell us what that -- for</p> <p>25 the record, what are you talking about?</p>
<p style="text-align: right;">Page 39</p> <p>1 papers, correct?</p> <p>2 A. Just to clarify, the internal</p> <p>3 reviewers got everything, all the papers. The</p> <p>4 external got five or seven.</p> <p>5 Q. Okay. And when papers were</p> <p>6 submitted to the external reviewers?</p> <p>7 A. I have this all at home. I don't</p> <p>8 remember. I mean, I'd have to --</p> <p>9 Q. Okay. All right. So it appears to</p> <p>10 me then that at the time that you applied for</p> <p>11 tenure at CSU, both the internal reviewers at</p> <p>12 CSU and whatever external reviewers were</p> <p>13 employed to consider those questions were aware</p> <p>14 that you were interested in and publishing</p> <p>15 papers regarding intelligence and race or</p> <p>16 intelligence and some other population</p> <p>17 subgroup?</p> <p>18 A. Yes. I have a specific memory of</p> <p>19 31 being announced, congratulations, you got</p> <p>20 this high impact journal publication, at a</p> <p>21 department meeting way back then.</p> <p>22 Q. And the same can be said of when</p> <p>23 you became a full professor, that both the</p> <p>24 internal reviewers for that purpose inside CSU</p> <p>25 as well as the external reviewers would have</p>	<p style="text-align: right;">Page 41</p> <p>1 A. It's a paper in 2010 called</p> <p>2 Differential Epidemiology: Intelligence,</p> <p>3 Neuroticism, and Chronic Disease by the 50 U.S.</p> <p>4 States.</p> <p>5 Q. I see. So you presented that; is</p> <p>6 that right?</p> <p>7 A. Correct.</p> <p>8 Q. And what was the second one?</p> <p>9 A. So the second one, Bommer, I mean,</p> <p>10 they presented, I wasn't there, but I'm an</p> <p>11 author of the paper.</p> <p>12 Q. I see it. Okay. All right. And</p> <p>13 then flip over to the last page again for me.</p> <p>14 A. Uh-huh.</p> <p>15 Q. You mentioned a little bit ago that</p> <p>16 you served as an expert?</p> <p>17 A. Yes.</p> <p>18 Q. So the general subject matter about</p> <p>19 which you were asked to testify, was it the</p> <p>20 same for each of these cases?</p> <p>21 A. Essentially. It was like Civil</p> <p>22 Rights Act law, disparate impact for</p> <p>23 statistical analysis.</p> <p>24 Q. Did you have to testify in a trial</p> <p>25 in any of those?</p>

<p style="text-align: right;">Page 42</p> <p>1 A. No.</p> <p>2 Q. Okay. Thank you, Dr. Pesta. One</p> <p>3 of the things that might happen is we might</p> <p>4 have to go back and refer to prior exhibits.</p> <p>5 That's why we keep them here, so they are</p> <p>6 accessible to you.</p> <p>7 Tell me about the open source.</p> <p>8 What is an open source? Strike all of what I</p> <p>9 just started that question with.</p> <p>10 What is an open source journal?</p> <p>11 A. It's one where you have immediate</p> <p>12 access to the articles. Most of them are</p> <p>13 behind a pay wall, but not open source.</p> <p>14 Q. I'm not sure I understood what your</p> <p>15 answer was.</p> <p>16 A. So for the open source articles,</p> <p>17 you can right now pull them up, but if you want</p> <p>18 one -- like the Journal of Intelligence is not</p> <p>19 open source, so technically to get their</p> <p>20 version, you'd have to log into their website</p> <p>21 and pay them.</p> <p>22 Q. Okay. So an open source journal</p> <p>23 means it is not behind a pay wall?</p> <p>24 A. Correct, to the best of my</p> <p>25 knowledge.</p>	<p style="text-align: right;">Page 44</p> <p>1 that's where you log in to get it; is that</p> <p>2 right?</p> <p>3 A. You don't even have to log in. I</p> <p>4 mean, you can just go to mdpi.com and see them</p> <p>5 all.</p> <p>6 Q. And search it, okay. What is</p> <p>7 Psych?</p> <p>8 A. It was a journal that just started,</p> <p>9 what year is this, I guess in '19, and I was I</p> <p>10 guess the founding editor. I didn't -- let me</p> <p>11 clarify. They selected me to be the first</p> <p>12 editor. I had nothing to do with setting the</p> <p>13 journal up, though.</p> <p>14 Q. And you said was. Is it no longer?</p> <p>15 A. I'm no longer the editor there.</p> <p>16 Q. Okay. All right. So you're not</p> <p>17 suggesting that it doesn't exist any longer?</p> <p>18 A. No. It does.</p> <p>19 Q. All right. Who are the they who</p> <p>20 started it?</p> <p>21 A. It would have been MDPI, their</p> <p>22 agents.</p> <p>23 Q. Any particular individuals?</p> <p>24 A. It was a lady named Daisy, I have</p> <p>25 no idea what her last name is, who contacted me</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. That's all right. Is there</p> <p>2 anything else that differentiates an open</p> <p>3 source journal from a non-open source journal?</p> <p>4 A. Not that I know of.</p> <p>5 - - - - -</p> <p>6 (Thereupon, Deposition Exhibit 2, an</p> <p>7 Editorial by Dr. Pesta in Psych, was</p> <p>8 marked for purposes of</p> <p>9 identification.)</p> <p>10 - - - - -</p> <p>11 Q. I'm handing you what's been marked</p> <p>12 as Exhibit 2, Dr. Pesta, and feel free to take</p> <p>13 a moment, but I think this is an editorial that</p> <p>14 you published on Psych, so if you need to take</p> <p>15 a moment.</p> <p>16 A. No. Yes.</p> <p>17 Q. Yes, it is? Okay. So let me ask a</p> <p>18 couple of questions first. What is MDPI?</p> <p>19 A. Multidigital publishing, something</p> <p>20 like that. It's just a for-profit business</p> <p>21 that publishes. I think they have over 100</p> <p>22 journals across various fields.</p> <p>23 Q. And are all of them open source?</p> <p>24 A. Yes. That's their model.</p> <p>25 Q. So they provide the platform that</p>	<p style="text-align: right;">Page 45</p> <p>1 and invited me to not be editor, but to submit,</p> <p>2 what do you call it, like a series of papers,</p> <p>3 like a topical issue for the journal.</p> <p>4 Q. Okay. How did you become editor</p> <p>5 then?</p> <p>6 A. They asked me to be editor.</p> <p>7 Q. And who is the they?</p> <p>8 A. It would have been Daisy, but I</p> <p>9 think she was more clerical, so I don't</p> <p>10 remember who the lead person was.</p> <p>11 MR. KELLY: Can we take a few</p> <p>12 minute break?</p> <p>13 MS. GIFFEN: Sure.</p> <p>14 (Brief recess.)</p> <p>15 Q. Dr. Pesta, we were talking about</p> <p>16 how you became associated with Psych and how</p> <p>17 you became its editor. Exhibit 2 appears to</p> <p>18 me, and, please, correct me if I'm wrong,</p> <p>19 appears to me to be sort of your introduction</p> <p>20 to the world of what Psych was intended to be,</p> <p>21 right?</p> <p>22 A. Correct.</p> <p>23 Q. And you're doing so on behalf of</p> <p>24 the editorial board, correct?</p> <p>25 A. Well, on behalf of MDPI, I guess.</p>

<p style="text-align: right;">Page 46</p> <p>1 The journal's editorial board?</p> <p>2 Q. I'm just reading. The first</p> <p>3 sentence says, "It is my great pleasure on</p> <p>4 behalf of the editorial board and myself to</p> <p>5 introduce Psych, MDPI's new multidisciplinary</p> <p>6 open," and then it goes on, right?</p> <p>7 A. I don't think we had an editorial</p> <p>8 board back then, so I don't remember what the</p> <p>9 concept --</p> <p>10 Q. Did it ever have an editorial</p> <p>11 board?</p> <p>12 A. It does now, and it just launched,</p> <p>13 so it grew over time, you know.</p> <p>14 Q. Were there any other editors</p> <p>15 besides yourself?</p> <p>16 A. There is now after I got fired from</p> <p>17 editor.</p> <p>18 Q. When did you get fired?</p> <p>19 A. It would have been probably late</p> <p>20 2019, early 2010 -- 2020. I'm sorry.</p> <p>21 Q. What happened with that separation?</p> <p>22 Tell us about it.</p> <p>23 A. So before I was editor, this is how</p> <p>24 I got introduced to Psych. Daisy sent me a</p> <p>25 letter saying, you know, we appreciate your</p>	<p style="text-align: right;">Page 48</p> <p>1 A. It did for me initially. Before I</p> <p>2 was editor, I was invited to do a special</p> <p>3 issue, and I took them up on their offer. Then</p> <p>4 after while that was in progress, they said,</p> <p>5 hey, do you want to be the editor in chief?</p> <p>6 Q. Oh, so this special issue happened</p> <p>7 before you became editor?</p> <p>8 A. Correct.</p> <p>9 Q. When was the special issue?</p> <p>10 A. It had to be early 2019, but I'd</p> <p>11 have to go back and check. It's all on line if</p> <p>12 you just type in Psych MDPI.</p> <p>13 Q. This says that your editorial,</p> <p>14 which is Exhibit 2, was received June 19th,</p> <p>15 2019, which would have been your submission,</p> <p>16 right?</p> <p>17 A. Correct.</p> <p>18 Q. Accepted June 19th, 2019, which</p> <p>19 would have been the acceptance of the paper?</p> <p>20 A. Correct.</p> <p>21 Q. And then the last reference is</p> <p>22 published June 20th, 2019, right?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. If you'll look down in the</p> <p>25 left-hand corner of Exhibit 2, I see Psych</p>
<p style="text-align: right;">Page 47</p> <p>1 research. Would you like to do a special</p> <p>2 issue?</p> <p>3 So I did a special issue on race</p> <p>4 and IQ and solicited papers from anybody who</p> <p>5 wanted to submit one, and we published. I</p> <p>6 think there was like maybe 12 papers published.</p> <p>7 But then someone external complained about one</p> <p>8 of the papers, and they fired me. I did</p> <p>9 appeal, but they fired me.</p> <p>10 Q. Which paper were they complaining</p> <p>11 about?</p> <p>12 A. It was by Richard Lynn.</p> <p>13 (Discussion off record.)</p> <p>14 Q. So I asked which paper were they</p> <p>15 concerned with, and your answer is?</p> <p>16 A. It was a paper by Richard Lynn. I</p> <p>17 don't remember the title, but it was like</p> <p>18 60 -- reflections on 60 years researching this</p> <p>19 stuff, so it was almost an autobiography.</p> <p>20 Q. What was the -- let's see how to</p> <p>21 ask this question. So I'm used to non-open</p> <p>22 source journals that publish issues, and then</p> <p>23 there are -- in what I would consider an issue,</p> <p>24 then there are X number of papers inside that</p> <p>25 issue. Is that how Psych works?</p>	<p style="text-align: right;">Page 49</p> <p>1 2019, 1, and then page references, right?</p> <p>2 A. Correct.</p> <p>3 Q. Is that referencing the first --</p> <p>4 A. That would have been my special</p> <p>5 issue after -- the first two pages would have</p> <p>6 been my special issue. Maybe there was another</p> <p>7 article that somebody submitted unrelated to</p> <p>8 IQ.</p> <p>9 Q. So this editorial appears at the</p> <p>10 same time as the special issue; is that</p> <p>11 correct?</p> <p>12 A. Around the middle of it.</p> <p>13 Q. Around the middle of what?</p> <p>14 A. So the special issue started first.</p> <p>15 Maybe three months later, I'd have to check,</p> <p>16 they asked me to be editor. So the special</p> <p>17 issue was still ongoing while I became editor.</p> <p>18 Q. How long did it take for the</p> <p>19 special issue to begin and end?</p> <p>20 A. Until they fired me it was just</p> <p>21 open. So it's not like, you know, bound copies</p> <p>22 of a journal that you'd have to have just an</p> <p>23 issue.</p> <p>24 Q. Got it. Which is what I think of</p> <p>25 when I think of a journal, a scientific journal</p>



<p style="text-align: right;">Page 50</p> <p>1 of the nature that we're talking about. That's</p> <p>2 not true anymore; is it?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. What was the problem with</p> <p>5 Richard Lynn's article?</p> <p>6 A. My opinion? Somebody complained</p> <p>7 that it was racist. Richard Lynn is a big time</p> <p>8 researcher. He's got over 100 publications on</p> <p>9 this stuff. Like the SPLC lists him as a hate</p> <p>10 person or whatever. So I think they were just</p> <p>11 offended by -- I didn't see the complaint. I</p> <p>12 think whoever complained was just offended by</p> <p>13 Richard Lynn. That's my belief.</p> <p>14 Q. Okay. Is he still alive, Richard</p> <p>15 Lynn?</p> <p>16 A. I think a year ago he passed away.</p> <p>17 Q. Okay. He's connected with the</p> <p>18 Ulster Institute?</p> <p>19 A. Yes.</p> <p>20 Q. What is the Ulster Institute?</p> <p>21 A. It's an affiliation of researchers.</p> <p>22 As far as I know they just do IQ research, but</p> <p>23 maybe there is more.</p> <p>24 Q. Have you ever been associated with</p> <p>25 them?</p>	<p style="text-align: right;">Page 52</p> <p>1 received for publication on June 8th, 2019,</p> <p>2 accepted August 28th, 2019, and then published</p> <p>3 August 30th; is that right?</p> <p>4 A. Correct.</p> <p>5 Q. Does that check with your memory of</p> <p>6 the sequence of events?</p> <p>7 A. August 13th is a critical date.</p> <p>8 Q. 13th?</p> <p>9 A. I'm sorry, 30th. It's one of the</p> <p>10 handouts that I produced today.</p> <p>11 Q. This was in many regards the</p> <p>12 subject matter of what we're going to spend the</p> <p>13 rest of the day talking about in terms of what</p> <p>14 happened at Cleveland State, right?</p> <p>15 A. Correct.</p> <p>16 Q. Before we get into those pieces, I</p> <p>17 note that if you look down on the bottom</p> <p>18 left-hand corner, it says Psych 2019, 1, and</p> <p>19 then it says 431 to 451.</p> <p>20 A. 459.</p> <p>21 MR. KELLY: 459.</p> <p>22 Q. 459. I should ask this just as an</p> <p>23 open question. What does that mean?</p> <p>24 A. So the one indicates -- well, it</p> <p>25 was published in 2019. One is the first issue</p>
<p style="text-align: right;">Page 51</p> <p>1 A. I think in between getting fired</p> <p>2 from CSU and today there might be one paper</p> <p>3 where I list it, but I'd have to check.</p> <p>4 Q. Okay.</p> <p>5 - - - - -</p> <p>6 (Thereupon, Deposition Exhibit 3, an</p> <p>7 Article Entitled Global Ancestry and</p> <p>8 Cognitive Ability, was marked for</p> <p>9 purposes of identification.)</p> <p>10 - - - - -</p> <p>11 Q. Dr. Pesta, you've been handed</p> <p>12 Exhibit 3 which I believe to be the paper that</p> <p>13 you wrote with John Lasker, John G.R. Fuerst,</p> <p>14 and Emil Kirkegaard entitled Global Ancestry</p> <p>15 and Cognitive Ability; is that correct?</p> <p>16 A. I think you said John Lasker. It's</p> <p>17 actually Jordan Lasker. I may have misheard</p> <p>18 you.</p> <p>19 Q. Thank you for correcting me.</p> <p>20 Jordan Lasker, is that correct, that's the</p> <p>21 paper that you published?</p> <p>22 A. Correct.</p> <p>23 Q. This was published in Psych, right?</p> <p>24 A. Yes.</p> <p>25 Q. And I note now this says it was</p>	<p style="text-align: right;">Page 53</p> <p>1 of the journal. It's the founding issue if</p> <p>2 that's what they call it. The page numbers in</p> <p>3 issue one were 431 to 459.</p> <p>4 Q. If we look back at Exhibit 2, it</p> <p>5 was Psych 2019, 1?</p> <p>6 A. Correct.</p> <p>7 Q. So same issue, but different page</p> <p>8 numbers, right?</p> <p>9 A. Yes. So -- okay, yes.</p> <p>10 Q. Now, was Exhibit 3, Global Ancestry</p> <p>11 and Cognitive Ability, was that part of the</p> <p>12 special issue?</p> <p>13 A. I honestly don't remember. I mean,</p> <p>14 it would be easy to check. It was definitely</p> <p>15 consistent with the theme of it.</p> <p>16 Q. Okay. Is it unusual for the editor</p> <p>17 of a journal to also have a submission to the</p> <p>18 journal?</p> <p>19 A. You just don't want to be the</p> <p>20 reviewer for it, so no, or involved in the</p> <p>21 review decision.</p> <p>22 Q. Who were the reviewers for</p> <p>23 Exhibit 3?</p> <p>24 A. I have no memory of who they were.</p> <p>25 In fact, they are not even identified. They</p>



<p style="text-align: right;">Page 54</p> <p>1 are anonymous.</p> <p>2 Q. So tell me how that works.</p> <p>3 A. So you submit an article like this</p> <p>4 one. The action editor who handles the</p> <p>5 document, you know, looks at it, reads it, and</p> <p>6 says who do I know who would be experts in</p> <p>7 these areas? Then they send out invitations to</p> <p>8 review for the journal.</p> <p>9 Q. So does MDPI keep a record of who</p> <p>10 the reviewers were?</p> <p>11 A. Yeah, I'm sure they do.</p> <p>12 Q. Does the editor take part in</p> <p>13 obtaining reviewers for articles?</p> <p>14 A. So I guess that I was the top of</p> <p>15 the pyramid, editor in chief. Then I can't</p> <p>16 remember who the subeditors, the next level</p> <p>17 were. Those would be the action editors.</p> <p>18 Now I just blanked on your</p> <p>19 question. Could you repeat it?</p> <p>20 Q. Does the editor take part in</p> <p>21 finding reviewers?</p> <p>22 A. It's -- I don't think it's</p> <p>23 mandated, but occasionally. I mean, if it's</p> <p>24 the article is within the editor's expertise,</p> <p>25 he or she might just be a reviewer or at least</p>	<p style="text-align: right;">Page 56</p> <p>1 THE WITNESS: Thank you.</p> <p>2 Q. Do you remember taking a sabbatical</p> <p>3 in 2019 to actually work on the writing of --</p> <p>4 MR. KELLY: Global Ancestry and</p> <p>5 Cognitive Ability?</p> <p>6 MS. KAMINSKI: Exhibit 3.</p> <p>7 Q. -- Exhibit 3?</p> <p>8 A. I don't have a strong memory of it,</p> <p>9 but I'm not denying it.</p> <p>10 - - - - -</p> <p>11 (Thereupon, Deposition Exhibit 4,</p> <p>12 Sabbatical Documentation, was marked</p> <p>13 for purposes of identification.)</p> <p>14 - - - - -</p> <p>15 Q. If you, Dr. Pesta, would take a</p> <p>16 look at Exhibit No. 4 which is, I believe, but</p> <p>17 you can tell me if this is wrong, your</p> <p>18 application for a sabbatical in the fall of</p> <p>19 2019?</p> <p>20 A. It does appear to be that, so yes.</p> <p>21 So this jogs my memory for sure.</p> <p>22 Q. And that the purpose behind the</p> <p>23 sabbatical was to engage in the research we</p> <p>24 have just been talking about including writing</p> <p>25 Exhibit 3?</p>
<p style="text-align: right;">Page 55</p> <p>1 know where to send it to or at least suggest</p> <p>2 who should review it.</p> <p>3 Q. Did you review papers that were</p> <p>4 submitted to Psych for publication while you</p> <p>5 were editor?</p> <p>6 A. Not all of them. I usually</p> <p>7 deferred to the action editors, but I think I</p> <p>8 had to rubber stamp their decisions at the end.</p> <p>9 Q. Did you review any other papers in</p> <p>10 which Jordan Lasker, John Fuerst, or Emil</p> <p>11 Kirkegaard were involved?</p> <p>12 A. No.</p> <p>13 Q. All right. So now I want to take</p> <p>14 us -- let me ask before we move to that, you</p> <p>15 took a sabbatical in the fall of 2019, right?</p> <p>16 A. '19? I thought I took it -- right.</p> <p>17 I took one right after getting tenure. Maybe</p> <p>18 I'm confusing it with that. I guess I did. I</p> <p>19 don't really remember.</p> <p>20 Q. It was --</p> <p>21 MR. KELLY: Let me just caution the</p> <p>22 witness if you don't know, don't speculate.</p> <p>23 Just tell her you don't know or you're not</p> <p>24 certain or you need something else to remind</p> <p>25 you.</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Well, what's the date on this?</p> <p>2 '18? Does it mention it? Yeah, so you're</p> <p>3 correct.</p> <p>4 Q. You were granted that sabbatical,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. How long did you take?</p> <p>8 A. It would have to be six months,</p> <p>9 because if you go a year, they dock some of</p> <p>10 your salary.</p> <p>11 Q. What's the point of a sabbatical?</p> <p>12 Describe it in laymen's term what sabbaticals</p> <p>13 are used for.</p> <p>14 A. I'm kind of a cynic. I think it's</p> <p>15 just a vacation for faculty. But theoretically</p> <p>16 you propose to either improve your teaching,</p> <p>17 design a new course, or you could focus more on</p> <p>18 research.</p> <p>19 Q. You get paid during the sabbatical,</p> <p>20 right?</p> <p>21 A. Six months 100 percent.</p> <p>22 Q. But you're not eligible to do it</p> <p>23 all the time. There is some limitation. Tell</p> <p>24 me, if you know, what is that?</p> <p>25 A. I think it's seven years which sort</p>

<p style="text-align: right;">Page 58</p> <p>1 of makes sense if I took one in '11 and now I'm 2 applying again in '18. 3 Q. So it's my understanding that most 4 faculty members try to do a sabbatical because 5 of what you just described. It really does 6 sound like a great opportunity. 7 A. Right. 8 Q. Did you have to make a report at 9 any point about what happened with your 10 sabbatical? 11 A. Yes. I believe the semester you 12 come back or maybe the next year, I don't 13 remember, you have to submit what was 14 accomplished to the department chair. 15 Q. Did you do that? 16 A. To the best of my memory, yes. 17 Q. Did you describe then the paper you 18 had published during that time frame? 19 A. Beyond just listing it, I don't 20 know that I would have described it. 21 Q. Okay. So that would have meant if 22 you started in the fall and when you say six 23 months, are we talking about -- 24 A. A semester. 25 Q. -- a semester or two semesters?</p>	<p style="text-align: right;">Page 60</p> <p>1 department chair. I think the college PRC 2 committee approves it, but I'm going on my 3 memory. 4 Q. PRC? 5 A. Peer review committee. 6 Q. Which would have been a group of 7 your colleagues, I assume? 8 A. One from each department in the 9 business college. 10 Q. Does the dean take part? 11 A. I suspect he probably has to 12 approve the final, you know, sabbatical 13 request, but I don't know. 14 Q. Is Exhibit 4 roughly to your 15 knowledge generally what you -- what you're 16 required to -- what information you're required 17 to provide in order to get the sabbatical? 18 A. You mean this whole packet? 19 Q. Yes. 20 A. Yes. 21 Q. All right. Now I'd like to go to 22 Exhibit 5. 23 - - - - - 24 (Thereupon, Deposition Exhibit 5, 25 the Research Misconduct</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Yeah. I'm sorry to interrupt you. 2 A semester, one semester. 3 Q. A semester. So you would have been 4 back to work by the spring of 2020; is that 5 right? 6 A. I've got to do the math on that. 7 Let's see. Yeah, that sounds right. 8 Q. Did anybody say anything to you 9 that they had a problem with your proposal for 10 your sabbatical or that they didn't like the 11 research that you were going to do in your 12 sabbatical? 13 A. No. 14 Q. When you provided your report about 15 the sabbatical and what you'd accomplished, did 16 anybody indicate to you that they were upset 17 about it? 18 A. No. 19 Q. Who was the dean at that time? 20 Excuse me. Let me before you answer that 21 question, how do you get a sabbatical? What do 22 you do? 23 A. So it's in the collective 24 bargaining agreement. There is an application 25 form and procedure. You submit it to your</p>	<p style="text-align: right;">Page 61</p> <p>1 Investigation Final Report, was 2 marked for purposes of 3 identification.) 4 - - - - - 5 Q. Dr. Pesta, I'm handing you what's 6 been marked as Exhibit 5, which I understand is 7 the final investigative report of the 8 investigation committee that concerned 9 allegations of research misconduct involving 10 you. Is that what you believe Exhibit 5 to be? 11 A. Correct. 12 Q. And if we go through it, the first, 13 there is a cover page, and then -- I'll start 14 over again. The first ten pages is the report 15 itself, correct? 16 A. Yes, but the first page is not 17 numbered, so it's probably nine. 18 Q. Good point. And then beginning on 19 page 11 are a list of attachments to the 20 report, correct? 21 A. Correct. 22 Q. All right. Prior to the time that 23 the investigative committee was convened, you 24 received notification from CSU that the 25 committee was being formed, right?</p>

<p style="text-align: right;">Page 62</p> <p>1 A. Yes, from Dr. Ward.</p> <p>2 Q. Okay. And you received a copy of</p> <p>3 the charge to the committee from Dr. Ward,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And if we look, the charge to the</p> <p>7 committee is pages 12 through 15 of the</p> <p>8 attachments to the report, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And the individuals who were going</p> <p>11 to serve on that committee were Christopher</p> <p>12 Mallett, Conor McLennan, and Wendy Regoecki,</p> <p>13 and I may not have pronounced that properly.</p> <p>14 A. Regoecki.</p> <p>15 Q. It's R-E-G-O-E-C-Z-I, and McLennan</p> <p>16 is M-C-L-E-N-N-A-N, and Mallett is</p> <p>17 M-A-L-L-E-T-T.</p> <p>18 And the charge to the committee is</p> <p>19 dated July 26th, 2021, correct?</p> <p>20 A. What page are you on now?</p> <p>21 Q. I'm on page 12.</p> <p>22 A. July 26th, 2021, yes.</p> <p>23 Q. Just in your own words, what do you</p> <p>24 understand was the impetus for convening the</p> <p>25 committee?</p>	<p style="text-align: right;">Page 64</p> <p>1 prior attorney, Jay Carson, was present on</p> <p>2 Zoom. I don't think he was there for the</p> <p>3 second one. That's my memory.</p> <p>4 Q. But he could have been if he wanted</p> <p>5 to?</p> <p>6 A. I think he had a conflict or</p> <p>7 something.</p> <p>8 Q. Don't hear any of my questions as</p> <p>9 asking for communications between you and</p> <p>10 Mr. Carson. Mr. Carson assisted you in</p> <p>11 communicating with the committee from time to</p> <p>12 time?</p> <p>13 A. One specific would be challenging</p> <p>14 the expertise of the members, but that's the</p> <p>15 only one, I think.</p> <p>16 Q. Asking for a delay of the</p> <p>17 committee's work?</p> <p>18 A. Oh, he did do that, too. I just</p> <p>19 didn't remember.</p> <p>20 Q. That's okay. Anything else that</p> <p>21 you can think of?</p> <p>22 A. Delay, a stay of the investigation,</p> <p>23 that was one of them. Then appealing I guess</p> <p>24 or objecting to the committee composition.</p> <p>25 Q. Describe for me, what was the</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yeah, so on 9-19-2019, I was</p> <p>2 alerted, the NIH emailed me and CSU</p> <p>3 administrators saying we have got several</p> <p>4 complaints about the Lasker paper, Exhibit 3,</p> <p>5 and here is 20 allegations that you need to</p> <p>6 defend. By the very next day, 9-20-2019, I had</p> <p>7 a very detailed email explaining everything,</p> <p>8 and I was waiting for them to reply. It only</p> <p>9 took them 615 days to reply to it, but that was</p> <p>10 the impetus. That's what I believe.</p> <p>11 Q. Okay. So, as you understand it,</p> <p>12 what prompted the convening of the</p> <p>13 investigation committee was the NIH</p> <p>14 communication that they were concerned</p> <p>15 about --</p> <p>16 A. Yeah, I don't have proof of that,</p> <p>17 but, yes, that's correct.</p> <p>18 Q. All right. How many times did you</p> <p>19 meet with the committee; do you remember?</p> <p>20 A. Twice on Zoom. There is another</p> <p>21 committee, too. The first investigative</p> <p>22 committee twice on Zoom.</p> <p>23 Q. You were represented by counsel</p> <p>24 before the committee?</p> <p>25 A. I think at the first meeting my</p>	<p style="text-align: right;">Page 65</p> <p>1 objection to the committee?</p> <p>2 A. They are not experts. They have no</p> <p>3 publications in genetics or intelligence, and</p> <p>4 they didn't even know what they were doing in</p> <p>5 my opinion.</p> <p>6 Q. Why was it important that they be</p> <p>7 experts in genetics or intelligence?</p> <p>8 A. Because the CSU policy says the</p> <p>9 RIO, research integrity officer, must ensure</p> <p>10 that the necessary expertise to evaluate this</p> <p>11 case is present on the committee. It says it</p> <p>12 in two places, but I don't have the policy</p> <p>13 numbers memorized.</p> <p>14 Q. Why would they need that expertise?</p> <p>15 A. Because they are trying to evaluate</p> <p>16 whether my research is I presume racist or</p> <p>17 pseudoscience or appropriate.</p> <p>18 Q. Why did they have to consider that</p> <p>19 at all?</p> <p>20 A. Well, it is highly technical stuff.</p> <p>21 I mean, they didn't even understand it to the</p> <p>22 extent they read it. I think that is unfair,</p> <p>23 so I objected.</p> <p>24 Q. You'll agree with me that the</p> <p>25 nature of the violations, the potential</p>

<p style="text-align: right;">Page 66</p> <p>1 violations that the committee was undertaking,  2 concerned allegations of research misconduct,  3 right?  4 A. Yes.  5 Q. Much of which had to do with your  6 communications, requests, et cetera, with the  7 NIH, right?  8 A. Correct.  9 Q. Why would they need to know  10 anything about genetics for that purpose?  11 A. How do you evaluate whether the  12 paper is no good or junk science? Can you  13 repeat the question again? I want to make  14 sure.  15 Q. Yes. You've indicated to me the  16 objection to there not being an expert on the  17 committee, and you told me that they didn't  18 have expertise, I think you said, in genetics  19 or intelligence, and I assume you mean research  20 in those areas.  21 A. Correct.  22 Q. My question to you is, I understand  23 from the committee's report what they were  24 investigating is whether you engaged in  25 research misconduct much of which was in your</p>	<p style="text-align: right;">Page 68</p> <p>1 the allegations of research misconduct unless  2 they had an expert in those two areas?  3 A. According to CSU policy, yes.  4 Q. Where does it say that?  5 A. I'd have to dig it up. It's 34.  6 The policy number is like 34.  7 Q. What I heard you say is the policy  8 says that the university is supposed to make  9 sure that the people conducting the  10 investigation have expertise in the area at  11 issue, right?  12 A. I don't know if that's verbatim,  13 but yes.  14 Q. So the area at issue is research  15 misconduct as described in the charge, right?  16 A. No. I mean, even the dates for  17 when I reported or didn't report articles they  18 couldn't grasp I think because of lack of  19 expertise, so I think it unfairly biased the  20 investigation.  21 Q. But you did not have an objection  22 that any of the committee members had conflicts  23 of interest or bias?  24 MR. KELLY: Object to the form of  25 the question. When? You can answer.</p>
<p style="text-align: right;">Page 67</p> <p>1 connection with NIH?  2 MR. KELLY: Object to the form of  3 the question, ambiguous. You can answer.  4 A. It just came out of my mind. Give  5 me a second.  6 Oh, because their lack of  7 expertise, and I think I can prove it later,  8 made them make several --  9 THE WITNESS: Don't say that? I'm  10 sorry.  11 A. Make several -- made them make  12 several mistakes, blatant mistakes, regarding  13 my fate.  14 Q. What were they?  15 A. Let me see. I have it. They  16 didn't even know what dbGaP was first of all.  17 There is a comment where Christopher  18 Mallett -- did I get his first name right?  19 Christopher Mallett like maybe a third of the  20 way into my first interview, he's like, I have  21 no idea what research topic you are -- what  22 topic you research. There are others that I'm  23 trying to recall. Oh, the IRB issue, too.  24 Q. So it's your view that the  25 committee wasn't going to be able to evaluate</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. You can answer.  2 A. I'm sorry. Can you repeat it?  3 Q. You did not raise an objection that  4 the committee members had a conflict of  5 interest or were biased?  6 A. I don't remember the biased part.  7 MR. KELLY: Same objection.  8 A. I don't remember the biased part.  9 I did not make an objection to conflict of  10 interest.  11 Q. I think you said this before, but I  12 want to make sure it's right. The specific  13 objection that you made was communicated to the  14 committee by Mr. Carson, correct?  15 A. I think it was to Dr. Ward. I  16 don't know if the committee saw it. There is  17 an email in -- I think it's in the binder maybe  18 or maybe the final report that says exactly  19 what you said.  20 Q. Okay. That forms the basis for the  21 objection that was raised?  22 A. Correct.  23 Q. Confirm for me, if you will, that  24 you were given several opportunities to -- in  25 addition to the two times you were interviewed</p>

<p style="text-align: right;">Page 70</p> <p>1 by the committee, that you were given several 2 opportunities to present written statements or 3 supplements to the committee, right? 4 A. In some cases, yes; in some cases, 5 no. 6 Q. So let's go through quickly the 7 report. If you switch to page 26, that is an 8 opening statement that you presented to the 9 committee, right? 10 A. Correct. 11 Q. And that preceded immediately your 12 interview, the first interview that you had, 13 right? 14 A. It was either the night before or 15 the same day of the interview that I sent this 16 in my memory. 17 Q. Okay. Did you request that the 18 interview be via Zoom? 19 A. I think it was COVID era, so it had 20 to be, I think. 21 Q. And during that initial meeting, 22 you were offered the opportunity to make an 23 opening statement, right? 24 A. I sent the opening statement. I 25 don't know if there was an offer.</p>	<p style="text-align: right;">Page 72</p> <p>1 It had something from something Taylor, 2 Dr. Taylor at UCLA, and maybe other stuff. Oh, 3 the Lasker paper, too. 4 Q. And then subsequently you were 5 provided additional information as the 6 committee's investigation happened, right? 7 A. The only other thing I can think of 8 is their report. 9 Q. How about the interviews? 10 A. Oh, yeah, for sure. 11 Q. Each time there was an interview by 12 the committee, whether it was an interview of 13 you or an interview of somebody else, there was 14 a transcription of the -- 15 A. Yeah, see, I didn't even get notice 16 of these interviews until after the fact, so I 17 couldn't submit questions as the CSU policy 18 says I should have been able to. 19 Q. Let's focus on the questions that I 20 ask. You were provided a transcription of the 21 interviews following the interviews, correct? 22 A. I need to be specific. I know I 23 got, it's in here, the Bird interviews with 24 those five people, whatever it was, and I know 25 I have the interview with Kent Taylor from UCLA</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. When you were informed that the 2 investigation was going to happen and you were 3 provided a copy of the charge, Dr. Ward 4 communicated with you and gave you access to a 5 share file which contained the information that 6 had also been provided to the committee, right? 7 A. I think it was a PDF file. We 8 called it the binder during the interviews, and 9 it contained all the allegations there. 10 Q. And it was on line? 11 A. I don't think so. I think it was 12 emailed to me. 13 Q. You got it in print? 14 A. In your share file. 15 MR. KELLY: Object to the form of 16 the question. 17 A. Can we start over? 18 MR. KELLY: It's muddled. 19 Q. What were you provided by Dr. Ward 20 in connection with the materials provided to 21 the committee? 22 A. We called it informally the binder, 23 the investigative binder. It was maybe half 24 this size. It had all my dbGaP applications. 25 It had the complaint letter from Bird, et al.</p>	<p style="text-align: right;">Page 73</p> <p>1 and of course my two interviews. If there were 2 other interviews, I didn't get them. 3 Q. After you received those, did you 4 review them to make sure they were correct? 5 A. Yes. 6 Q. Did you ever raise an objection of 7 no, that's not what happened? 8 MR. KELLY: Objection to the 9 question, ambiguous. You can answer. Unless I 10 instruct you not to answer, you can always 11 answer after my objection. Go ahead. 12 A. Sorry. You'll have to repeat it. 13 He knocked the question out of my head. 14 Q. After reading the transcriptions of 15 your interviews with the committee, did you 16 ever find that they were incorrect in any way? 17 A. I guess can you give me an example 18 of what incorrect means? I mean, there is 19 typos in here from the Zoom auto transcriber. 20 I honestly don't know how to answer that. 21 Q. Did you find that they were 22 substantively incorrect? 23 MR. KELLY: Object to the form of 24 the question, ambiguous. 25 A. I think what happened -- because I</p>



<p style="text-align: right;">Page 74</p> <p>1 saw the video, too. There's a link to it. So</p> <p>2 I watched the video and read the transcript.</p> <p>3 What I said was pretty accurately laid on</p> <p>4 paper.</p> <p>5 Q. All right. So the transcriptions</p> <p>6 that we have are, as you say, pretty accurate</p> <p>7 to what the video of the interviews said?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. If you turn to page 34, are</p> <p>10 you with me?</p> <p>11 A. Yes.</p> <p>12 Q. You're asked by Conor McLennan, "Do</p> <p>13 you believe your handling of the data set is</p> <p>14 controversial? Please, explain."</p> <p>15 And you said, "Absolutely not. I</p> <p>16 believe, like to the best of my ability, I</p> <p>17 tried to follow the NIH's policy and</p> <p>18 guidelines. And when I reported stuff, I to</p> <p>19 the best of my ability tried to report exactly</p> <p>20 what they wanted. Nothing more, nothing less.</p> <p>21 I did not share data with anyone not authorized</p> <p>22 to use it. I do believe that the data I -- the</p> <p>23 Lasker paper -- is inconsistent with the</p> <p>24 applications I produced."</p> <p>25 A. You said inconsistent?</p>	<p style="text-align: right;">Page 76</p> <p>1 and it's the handout that I have, one of them.</p> <p>2 The official date of publication,</p> <p>3 the NIH director didn't know it. We had to</p> <p>4 point it out to him. It would be that one</p> <p>5 there (indicating). I think it's that one. Is</p> <p>6 that it?</p> <p>7 MR. KELLY: Do you want to mark</p> <p>8 that?</p> <p>9 - - - - -</p> <p>10 (Thereupon, Deposition Exhibit 6, a</p> <p>11 One-Page Document from a Zoom</p> <p>12 Interview Submitted by Dr. Pesta,</p> <p>13 was marked for purposes of</p> <p>14 identification.)</p> <p>15 - - - - -</p> <p>16 A. I don't think this is the one. I'm</p> <p>17 sorry. No, this is the one.</p> <p>18 MS. GIFFEN: So, first of all, let</p> <p>19 the record reflect Exhibit 6 is a document that</p> <p>20 Dr. Pesta brought with him today to his</p> <p>21 deposition.</p> <p>22 Q. Dr. Pesta, what is Exhibit 6?</p> <p>23 A. Okay. It shows that -- so one of</p> <p>24 the things they said is you didn't report</p> <p>25 Lasker, the publication, when you should have,</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Excuse me. "Is consistent with the</p> <p>2 applications that I produced. And the one</p> <p>3 problem that everyone stuck on is it's the same</p> <p>4 data, TCP. I had three applications for the</p> <p>5 same data, but I was screwed up, and I reported</p> <p>6 the Lasker paper in the one application that</p> <p>7 didn't mention intelligence, and so I think a</p> <p>8 lot of the issues arise from that."</p> <p>9 What did that mean.</p> <p>10 A. Okay. So --</p> <p>11 MR. KELLY: Object to the form of</p> <p>12 the question, ambiguous. Go ahead and answer.</p> <p>13 A. So at the time of the interview,</p> <p>14 this is what I concluded. After the interview</p> <p>15 in preparing for this lawsuit, I did more</p> <p>16 research, and I will just say that I did not</p> <p>17 violate NIH policies at all with one exception</p> <p>18 we can get to whenever you want.</p> <p>19 Q. Okay. So how is it that you didn't</p> <p>20 violate the policy with respect to the Lasker</p> <p>21 paper as described on page 34 of the interview?</p> <p>22 A. So Deputy Director of NIH, Michael</p> <p>23 Lauer, L-A-U-E-R, one of the things he accused</p> <p>24 us of is how we reported these articles or</p> <p>25 didn't report them, but he's provably wrong,</p>	<p style="text-align: right;">Page 77</p> <p>1 and there was a semi lengthy debate about when</p> <p>2 it should be reported. This first paragraph</p> <p>3 here illustrates an example of that.</p> <p>4 So I think it was in my first</p> <p>5 interview, Conor is like, You know, what's</p> <p>6 important for you to report is when it's</p> <p>7 accepted, and this is an example of how lack of</p> <p>8 expertise hurt me. So according to Conor, his</p> <p>9 opinion, when the paper is accepted for</p> <p>10 publication obligates you to report it. He's</p> <p>11 flatly wrong. There is the NIH policy</p> <p>12 underneath it.</p> <p>13 Q. Oh, I see, the official date of</p> <p>14 publication?</p> <p>15 A. Yes, which appears on the journal</p> <p>16 article.</p> <p>17 Q. So the reference here that you're</p> <p>18 making is the when it should have been</p> <p>19 reported, right?</p> <p>20 A. And if, when and if.</p> <p>21 Q. This appears to me to be only about</p> <p>22 when. How is it --</p> <p>23 A. It's really complicated. So every</p> <p>24 year -- once you get approved for the data, you</p> <p>25 can use it for one year, and then you've got to</p>



<p style="text-align: right;">Page 78</p> <p>1 either renew it if you want to continue using  2 it for another year or you have to close it out  3 meaning I'm done with the research and I'm  4 going to delete everything.  5 Whenever for the three applications  6 I submitted -- in fact, this is the other  7 handout. I don't know if we should refer to it  8 now. So every time I submitted an application,  9 and there were three, for the same TCP data  10 set, three dates would be generated; the date I  11 submitted it to CSU, the date CSU approved it  12 and forwarded it to NIH, and then the date NIH  13 approved it.  14 So even more complicated, when  15 you're renewing an article -- or a data access  16 and want to use this again for another year,  17 you have to report any officially published  18 articles, and that's it. That's what we did.  19 When you're closing out an  20 application, you have to report everything  21 which includes preprints, conference  22 presentations, and publications.  23 Q. Let's look at something else. What  24 was the data set that you were interested in  25 acquiring?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I'm sorry. Lower case D, lower  2 case B, upper case G, lower case A, upper case  3 P.  4 MR. KELLY: This is 7?  5 THE NOTARY: Yes.  6 MR. KELLY: These are three  7 documents here.  8 MS. GIFFEN: Yes. I want them all  9 as one exhibit because it's too confusing to  10 have them separate.  11 Q. Can you confirm for me, Dr. Pesta,  12 that Exhibit 7 is your first request for the  13 TCP data from NIH?  14 A. Correct.  15 Q. Okay. And that was --  16 MS. GIFFEN: I don't know, Fred, if  17 you want to -- we've got this if you want to  18 put it together (indicating).  19 MR. KELLY: I'm not going to touch  20 it.  21 MS. GIFFEN: Thank you. Let me  22 have the exhibit so we can do this.  23 THE WITNESS: Okay. Thank you.  24 Q. So this is the first request that  25 you had made to the NIH for the TCP data?</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Okay. It's from dbGaP, database of  2 phenotypes and genotypes, and a subset -- so it  3 just houses a bunch of genetic data. The  4 specific data we wanted was TCP, trajectories  5 of complex phenotypes.  6 Q. From here on out we're going to  7 refer to that as TCP, okay?  8 A. Okay. Yes.  9 Q. And there were three different  10 requests that you made to the NIH that involved  11 TCP data, correct?  12 A. I think there was a fourth one, but  13 it was after Lasker was published and I was  14 being investigated or during that time.  15 Q. Let's hold off on that, and let's  16 focus on those first three.  17 - - - - -  18 (Thereupon, Deposition Exhibit 7,  19 Project Request 18007, was marked  20 for purposes of identification.)  21 - - - - -  22 MR. KELLY: If I may, you should  23 probably spell that, dbGaP.  24 MS. GIFFEN: Hold on. Now you can  25 begin. She wasn't at her machine yet.</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Correct.  2 Q. This was the first request that you  3 had made at any time in your career for data  4 from NIH, correct?  5 A. I've used some publicly available  6 NIH data for other publications. First  7 genetic, first restricted access data.  8 Q. First restricted. So we should be  9 clear that all of what we're talking about is  10 restricted access data, correct?  11 A. I agree.  12 MR. KELLY: Object to the form of  13 the question.  14 Q. This refers to the project name is  15 Sex Differences in Cortical Volume and G in a  16 Large Adolescent Sample, right?  17 A. Right.  18 Q. The request date is noted as  19 April 12th, 2018?  20 A. So I had to reverify these things,  21 and I'm pretty sure the sex differences dates  22 here for this application are all correct.  23 Some of the other ones aren't, but, yes,  24 4-12-18.  25 Q. You are what's called the principal</p>

<p style="text-align: right;">Page 82</p> <p>1 investigator, right?</p> <p>2 A. Correct.</p> <p>3 Q. And the principal investigator is a</p> <p>4 term of art used by NIH for purposes of making</p> <p>5 data requests, right?</p> <p>6 A. Yeah. I guess it's their</p> <p>7 terminology.</p> <p>8 Q. And let's also make clear that the</p> <p>9 application that you're making is on line,</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. So you go to NIH. You use a</p> <p>13 special ID number I suspect?</p> <p>14 A. I think it's just a user. It was</p> <p>15 my name, Bryan Pesta, no spaces.</p> <p>16 Q. And so then you log in, right?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And you then fill in the project</p> <p>19 request?</p> <p>20 A. Correct.</p> <p>21 Q. And there are forms that come up</p> <p>22 that you then fill in?</p> <p>23 A. Correct.</p> <p>24 Q. And what we're looking at in</p> <p>25 Exhibit 7 is the physical printout of those</p>	<p style="text-align: right;">Page 84</p> <p>1 model data use certification agreement," right?</p> <p>2 A. Correct.</p> <p>3 Q. Sometimes called a DUC?</p> <p>4 A. They are the same thing, correct.</p> <p>5 Q. The DUC is attached to Exhibit 7 on</p> <p>6 pages --</p> <p>7 A. It renumbers.</p> <p>8 Q. It renumbers. You are exactly</p> <p>9 right.</p> <p>10 A. One to seven.</p> <p>11 Q. All right. There is also -- I</p> <p>12 don't think there is on this one.</p> <p>13 A. The addendum?</p> <p>14 Q. Oh, there is.</p> <p>15 A. Okay.</p> <p>16 Q. There is also an addendum to the</p> <p>17 data use certification agreement. Do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And in those you agree to</p> <p>21 comply with both what's in the DUC as well as</p> <p>22 the NIH security best practices for</p> <p>23 controlled-access data?</p> <p>24 A. Correct.</p> <p>25 - - - - -</p>
<p style="text-align: right;">Page 83</p> <p>1 questions that you answered as part of the</p> <p>2 request; is that right?</p> <p>3 A. The on-line --</p> <p>4 MR. KELLY: Object to the form of</p> <p>5 the question, ambiguous.</p> <p>6 A. The on-line, you know, it was like</p> <p>7 you're filling out a form, and you don't see</p> <p>8 like the bubbles, but, yes, this is, I agree.</p> <p>9 Q. And on the second page of</p> <p>10 Exhibit 7, you write, and this is the use</p> <p>11 statement for the data, right?</p> <p>12 A. Correct.</p> <p>13 Q. Therein there is a non-technical</p> <p>14 study?</p> <p>15 A. Summary.</p> <p>16 Q. Non-technical summary, right?</p> <p>17 A. Correct.</p> <p>18 Q. And in the form it says that use of</p> <p>19 the data --</p> <p>20 A. What page are you on? I'm sorry.</p> <p>21 Q. I think it's actually the third</p> <p>22 page.</p> <p>23 A. Okay.</p> <p>24 Q. There is reference to, "Use of the</p> <p>25 data is contingent upon compliance with the</p>	<p style="text-align: right;">Page 85</p> <p>1 (Thereupon, Deposition Exhibit 8, a</p> <p>2 Document Entitled NIH Security Best</p> <p>3 Practices for Controlled-Access Data</p> <p>4 Subject to the NIH Genomic Data</p> <p>5 Sharing Policy, was marked for</p> <p>6 purposes of identification.)</p> <p>7 - - - - -</p> <p>8 Q. This, Exhibit 8, is a copy of those</p> <p>9 best practices I just referred to, right?</p> <p>10 A. I could have sworn that our DUC was</p> <p>11 from October of 2012, the original when</p> <p>12 we -- so I think this is newer. I don't know</p> <p>13 if there is any changes, but --</p> <p>14 Q. Well, if this was updated March of</p> <p>15 2015 and your request was 2018?</p> <p>16 A. Yeah. So when I printed them</p> <p>17 out -- I don't have them -- it said, I'm</p> <p>18 positive on this, I think it said October. Now</p> <p>19 I'm blocking on the date, but it was a</p> <p>20 different date. Yeah, October 12th, 2012.</p> <p>21 Q. Which was what?</p> <p>22 A. You see where it says updated on</p> <p>23 Exhibit 8, updated March 9th?</p> <p>24 Q. Yes.</p> <p>25 A. Mine didn't say that. It said</p>

<p style="text-align: right;">Page 86</p> <p>1 updated in 2012. I don't know that there is 2 differences between the two. 3 Q. Okay. Wait a second. Hold on. So 4 let me refer you to the DUC which is contained 5 in Exhibit 7. 6 A. Okay. What page? 7 Q. It's where it's renumbered. It's 8 the model data use certification agreement. 9 A. Got it. 10 Q. That's dated October 12th, 2012, 11 right? 12 A. Yeah. So maybe my memory confused 13 the two. I agree. 14 Q. But the DUC agreement refers to the 15 best practices for controlled-access policy, 16 right? 17 A. Correct. Which is the March 9th. 18 Q. Yeah okay. So are we in agreement 19 that those were the two things that applied to 20 the request for information from NIH? 21 A. Yes. 22 Q. I understand that when you get an 23 approval to have access to the data like TCP, 24 you have it for one year? 25 A. Correct.</p>	<p style="text-align: right;">Page 88</p> <p>1 refresher double-sided thing that I gave you 2 guys. 3 - - - - - 4 (Thereupon, Deposition Exhibit 10, a 5 Timeline Regarding BJP's Data Access 6 Requests, was marked for purposes of 7 identification.) 8 - - - - - 9 Q. I'm sorry. We're now on 10 Exhibit 10. First of all, Dr. Pesta, what is 11 Exhibit 10? 12 A. It shows a detailed timeline of 13 events, when I should have reported what, when 14 I shouldn't have reported, and footnotes of 15 explanations on the back. 16 Q. You prepared this? 17 A. I did. 18 Q. When did you prepare this? 19 A. Believe it or not, this table took 20 me 100 hours to create, just this double-sided 21 thing, so it took months. I probably had it 22 finished maybe two months ago. I don't 23 remember. 24 Q. And what did you do with this? 25 A. So I wanted to confirm that what</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. You have to either get a renewal at 2 that point or you have to close it out? 3 A. Correct. 4 Q. And so, and I think this is what 5 you were referring to earlier in terms of 6 noting whether papers had been published? 7 A. Yeah, the when or if, remember 8 that? 9 Q. Yeah. But so then the renewal 10 dates become important, right? 11 A. Plus the closeout dates. 12 - - - - - 13 (Thereupon, Deposition Exhibit 9, 14 Project Request No. 19090, was 15 marked for purposes of 16 identification.) 17 - - - - - 18 A. Okay. 19 Q. Handing you what's been marked as 20 Exhibit 9, can you confirm for me that this is 21 the second request you made for the TCP data? 22 A. Yes. 23 Q. And it appears that that request 24 was made July 15th of 2018? 25 A. I would need to check that</p>	<p style="text-align: right;">Page 89</p> <p>1 you have there as Exhibit 9 and 7, the dates 2 are accurate because I noticed NIH will throw 3 in weird dates that make no sense. So I went 4 back to my NIH account on line, downloaded the 5 applications again, and just made doubly sure 6 that these dates are correct. 7 Q. Okay. So this is a compilation 8 that you made of the data that -- 9 A. Of the applications that I got off 10 the dbGaP website. 11 Q. Okay. Let's see. We'll go back to 12 Exhibit 7 which is the sex differences paper. 13 The project ID No. Is 18007, and it says the 14 request date was April 12th, 2018, right? 15 A. Which is consistent with the CSU 16 Exhibit 7. 17 Q. Okay. Now let's look at Exhibit 9 18 which is the 19090 application. 19 A. Okay. 20 Q. And it says it was applied for on 21 July 15th, 2018? 22 A. Correct. 23 Q. And your table shows it was applied 24 for on July 15, 2018? 25 A. Correct.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. Okay. So that appears to be the</p> <p>2 same, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So now let's examine</p> <p>5 Exhibit 9 a little more carefully. This is to</p> <p>6 collect the TCP data again, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you note here on page 2 of the</p> <p>9 request, "Note, I've already received access to</p> <p>10 these data (18007)" which is the reference to</p> <p>11 the sex differences request, correct?</p> <p>12 A. Correct. So this would have been</p> <p>13 in the -- in the renewal of Exhibit 9.</p> <p>14 MR. KELLY: Just answer the</p> <p>15 question. Just let her ask the question.</p> <p>16 THE WITNESS: Okay.</p> <p>17 MR. KELLY: Reply to the question.</p> <p>18 Q. This note is in the project request</p> <p>19 that you did?</p> <p>20 A. Yeah. So NIH is a strange thing.</p> <p>21 MR. KELLY: Just answer the</p> <p>22 question.</p> <p>23 THE WITNESS: It's not going to</p> <p>24 make sense, though.</p> <p>25 MR. KELLY: She'll figure it out.</p>	<p style="text-align: right;">Page 92</p> <p>1 Exhibit 9, not Exhibit 7, so I say yes to your</p> <p>2 question.</p> <p>3 Q. So this is going to be challenging,</p> <p>4 so I'd like to agree on some nomenclature.</p> <p>5 A. Sure.</p> <p>6 Q. So when we talk about the request</p> <p>7 involving sex differences, we're talking about</p> <p>8 project ID 18007?</p> <p>9 A. Correct.</p> <p>10 Q. And when we talk about the request</p> <p>11 involving the admixture analysis purpose, we're</p> <p>12 talking about 19090?</p> <p>13 A. Correct.</p> <p>14 Q. And when we're talking about</p> <p>15 transracial validity --</p> <p>16 A. Yes.</p> <p>17 Q. -- we're talking about the third</p> <p>18 that we haven't yet gotten to --</p> <p>19 MR. KELLY: Objection.</p> <p>20 Q. -- which is 19747. Are you all</p> <p>21 right with that?</p> <p>22 MR. KELLY: Object to the form of</p> <p>23 the question, ambiguous and confusing.</p> <p>24 A. Yes.</p> <p>25 Q. All right. So this Exhibit 9</p>
<p style="text-align: right;">Page 91</p> <p>1 That's what her job is.</p> <p>2 A. Can you repeat, please?</p> <p>3 Q. So when you made the request in</p> <p>4 Exhibit 9 for project ID 19090, you said to the</p> <p>5 NIH, "Note: I've already received access to</p> <p>6 these data," and then you made reference to the</p> <p>7 project which is specifically sex differences</p> <p>8 in cortical volume meaning the prior request</p> <p>9 for data to NIH, correct?</p> <p>10 A. I don't think so.</p> <p>11 MR. KELLY: Go ahead.</p> <p>12 A. No. Can you repeat? I'm sorry.</p> <p>13 I'm getting flustered.</p> <p>14 MR. KELLY: I'm going to instruct</p> <p>15 the witness to just listen to the question, see</p> <p>16 if you can answer it. Catch the ball before</p> <p>17 you try to start running with it. Just listen</p> <p>18 to it. If it's a yes or no question, you can</p> <p>19 answer yes or no.</p> <p>20 (Record read.)</p> <p>21 THE WITNESS: I can answer?</p> <p>22 A. Yeah, so I just screwed up a minute</p> <p>23 ago. I thought I was like at 18007 when you</p> <p>24 asked the question. That's what confused me.</p> <p>25 But now I understand that you're talking about</p>	<p style="text-align: right;">Page 93</p> <p>1 refers to the admixture analysis, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And we've now determined that, as</p> <p>4 part of your initial request, you noted that</p> <p>5 you'd already received access to the data from</p> <p>6 the sex differences request, correct?</p> <p>7 A. Correct, which was the first.</p> <p>8 Q. But this time the purpose for using</p> <p>9 that data is different, correct?</p> <p>10 A. A different topic, yes.</p> <p>11 Q. And that related to, "I will employ</p> <p>12 admixture analysis to determine if global</p> <p>13 ancestry predicts mental health outcomes. I</p> <p>14 will also apply admixture mapping to determine</p> <p>15 which regions of the genome are most strongly</p> <p>16 associated with the outcomes."</p> <p>17 A. Correct.</p> <p>18 Q. In the non-technical summary of</p> <p>19 your request, the mental disorders, actually</p> <p>20 it's in both places that you were referring to</p> <p>21 that what you're interested in studying</p> <p>22 includes schizophrenia and depression, correct?</p> <p>23 A. I'm looking for depression. You</p> <p>24 said non-technical summary?</p> <p>25 Q. It's actually in both.</p>

<p style="text-align: right;">Page 94</p> <p>1 A. Oh, yeah, and low IQ, but I admit</p> <p>2 we weren't explicit.</p> <p>3 Q. Is there some way where you made</p> <p>4 reference to IQ that isn't explicit?</p> <p>5 A. 19747, which we haven't gotten to</p> <p>6 yet, has all that. There might be something in</p> <p>7 here. Let me check.</p> <p>8 Q. Please, do.</p> <p>9 A. Thank you. Yeah, no, I think 19747</p> <p>10 is going to be a lot more relevant.</p> <p>11 Q. So for our purposes we can agree</p> <p>12 that the request for NIH data in Exhibit 9 does</p> <p>13 not relate to low IQ?</p> <p>14 MR. KELLY: Object to the form of</p> <p>15 the question.</p> <p>16 A. Not directly for sure.</p> <p>17 Q. Where does it indirectly?</p> <p>18 A. I mean, I didn't read through the</p> <p>19 whole thing. I scanned through it.</p> <p>20 Q. Please, do.</p> <p>21 MR. KELLY: Read it.</p> <p>22 Q. I would like you to tell me if in</p> <p>23 any way it refers to IQ.</p> <p>24 MS. KAMINSKI: Do you want to go</p> <p>25 off the record while he reads it?</p>	<p style="text-align: right;">Page 96</p> <p>1 about direct or indirect reference to cognitive</p> <p>2 ability.</p> <p>3 Q. I actually said IQ, but --</p> <p>4 A. Okay.</p> <p>5 Q. -- that is your best indication,</p> <p>6 right?</p> <p>7 A. For the specific project, yes.</p> <p>8 Q. All right.</p> <p>9 - - - - -</p> <p>10 (Thereupon, Deposition Exhibit 11, a</p> <p>11 Project Renewal Application for</p> <p>12 Project 19090, was marked for</p> <p>13 purposes of identification.)</p> <p>14 - - - - -</p> <p>15 A. Can I ask you a question? I think</p> <p>16 it's a duplicate of 19090.</p> <p>17 MR. KELLY: Yes, it is. This is --</p> <p>18 A. Eleven and Exhibit 9 appear to</p> <p>19 be --</p> <p>20 Q. No. This is the renewal.</p> <p>21 A. Oh, okay. Thank you.</p> <p>22 Q. All right. Dr. Pesta, can you</p> <p>23 confirm for me that Exhibit 11 is the form that</p> <p>24 you filled out to get a renewal of the</p> <p>25 admixture analysis --</p>
<p style="text-align: right;">Page 95</p> <p>1 MS. GIFFEN: Sure. Let me know</p> <p>2 when you're done, and we'll go back on the</p> <p>3 record.</p> <p>4 (Brief recess.)</p> <p>5 MS. GIFFEN: Back on the record.</p> <p>6 Q. Dr. Pesta, have you completed</p> <p>7 reviewing Exhibit --</p> <p>8 A. Nine.</p> <p>9 Q. -- 9?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me does it either</p> <p>12 directly or indirectly refer to a purpose that</p> <p>13 involves IQ?</p> <p>14 A. Yeah. The indirect reference would</p> <p>15 be about one-third down where it says key</p> <p>16 words, and then it says cognitive disorders.</p> <p>17 Q. Okay. You perceive that low IQ is</p> <p>18 a cognitive disorder?</p> <p>19 A. Yeah. So there is that, what is</p> <p>20 it, Virginia versus Atkins where if your IQ is</p> <p>21 not 70 or higher you can't be executed.</p> <p>22 Q. And so you're suggesting that that</p> <p>23 was to alert NIH that one of the purposes that</p> <p>24 you were going to use this data for --</p> <p>25 A. No. I was answering your question</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Of 19090.</p> <p>2 Q. -- data request?</p> <p>3 A. Correct.</p> <p>4 Q. And that shows a request date of</p> <p>5 August 29th, 2019?</p> <p>6 A. Correct.</p> <p>7 Q. And is that correct?</p> <p>8 A. Yes. The next two dates in the</p> <p>9 same column are irrelevant.</p> <p>10 Q. Why do you say they are irrelevant?</p> <p>11 A. They don't -- I mean, look at the</p> <p>12 previous renewal date, 9-9-19. I didn't do</p> <p>13 that. It just makes no sense, the previous</p> <p>14 renewal date. I mean, I put in this</p> <p>15 application on 8-29-19, and I just don't know</p> <p>16 what that means, the middle guy.</p> <p>17 Q. Well, if we go back to Exhibit 9,</p> <p>18 and this relates to the same project number,</p> <p>19 right, the admixture analysis project number?</p> <p>20 A. Yes. Okay.</p> <p>21 Q. All right. And that original</p> <p>22 request was July 15th, 2018, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And Exhibit 11 relates to that same</p> <p>25 project number?</p>

25 (Pages 94 - 97)



<p style="text-align: right;">Page 98</p> <p>1 A. Correct. But my point is -- well,  2 I mean, I just want to clarify. So it says I  3 did that on 8-29-18. How could the previous  4 renewal date be later in time?  5 Q. Oh, you're just objecting to the --  6 A. Dates.  7 Q. -- how the subsequent dates are  8 populated?  9 A. Yes. I agree with the request  10 date, but not the other two.  11 Q. Okay. I actually hadn't asked you  12 about the other two dates. I just want to note  13 that for our purposes.  14 A. All right. I'm sorry.  15 Q. All right. And should we check to  16 see if that date is consistent with your  17 Table 1?  18 A. Yes, it is.  19 Q. Okay. So at least with respect to  20 project 18007 and project 19090, we have both  21 the original request date and the renewal  22 dates, correct?  23 A. Correct.  24 Q. When were you supposed to have your  25 renewal request done by for project 19090?</p>	<p style="text-align: right;">Page 100</p> <p>1 that Exhibit 12 relates to the third  2 application you made for the TCP data?  3 A. Correct.  4 Q. And that the nomenclature we  5 determined to use with respect to that is the  6 transracial validity data or, excuse me,  7 purpose, correct?  8 A. Correct.  9 Q. So this shows that the request, the  10 initial request for 19747, was dated  11 September 19th, 2018; is that correct?  12 A. Correct.  13 Q. And does that check with your  14 Table 1?  15 A. Yes, it does, column three.  16 Q. Okay. All right. What was the  17 purpose for this data request?  18 A. So it was to study whether genetics  19 plays a partial -- it was the focus of the  20 Lasker paper. This one produced that. This  21 RUS -- wait, we're on Exhibit 12, right?  22 Q. Yes.  23 A. Yeah. So, I mean, it's technical  24 jargon. I can explain it if you want.  25 Q. Go ahead, please.</p>
<p style="text-align: right;">Page 99</p> <p>1 A. You have to do it within a year. I  2 mean, I guess you could close it out two weeks  3 after getting it, or you could wait 364 days  4 and then submit it.  5 Q. Do you know what the date was that  6 you had to do that for project 19090?  7 A. Well, I don't think it's reflected  8 in these documents because I applied for that  9 on 7-15-18, but it took time for CSU to approve  10 it and the NIH. So whatever that NIH date is  11 where I was granted access, a year from there  12 would be the deadline for renewing it or  13 closing it out.  14 Q. Do you remember that that was  15 September 1st, 2019?  16 A. No, I don't remember.  17 Q. Okay.  18 - - - - -  19 (Thereupon, Deposition Exhibit 12,  20 Project Request for Project 19747,  21 was marked for purposes of  22 identification.)  23 - - - - -  24 Q. Handing you what's been marked as  25 Exhibit 12, can you confirm for me, Dr. Pesta,</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Am I looking at the right one?  2 Yeah, if you look at page 2.  3 Q. Yes.  4 A. It looks like the middle paragraph.  5 Q. What?  6 A. There is the three paragraphs up  7 top. The second and third are relevant.  8 Actually, the first is, too. I'm sorry.  9 Q. All right. So if you could state  10 in laymen's terms, what was the research use  11 for which you sought the data?  12 A. Transethnic validity means you have  13 these polygenic scores, which in this case  14 would be a genetic estimate of your IQ, and  15 they're developed almost mostly on white  16 people.  17 So the issue is can you take a PGS  18 score developed on primarily white people and  19 have it still be valid with black people,  20 because if it's not valid, you can't even do a  21 comparison. So that's the first thing.  22 Yeah, so that's basically the first  23 paragraph. All right. The second, did you  24 want me to continue?  25 Q. Please.</p>



<p style="text-align: right;">Page 102</p> <p>1 A. The second paragraph, this is  2 statistical technical stuff, but Lee, et al.,  3 where we got the PGS scores from, they did  4 their transethnic validity validation different  5 than how we did it, and our argument was that  6 our approach was better.  7 Q. What was the approach you were  8 using?  9 A. Well, it says that; doesn't it?  10 Q. Pardon me?  11 A. I'm just reading it. Yeah, it's  12 the choice of which, the terminology is SNP,  13 single nucleotide polymorphisms, were used as  14 our estimates.  15 Q. Estimates of what?  16 A. Genetic IQ.  17 Q. So the SNPs, what you wrote here  18 was, "This means that the authors included all  19 SNPs associated with education regardless of  20 the significance of the association."  21 A. I can explain that, but it's  22 technical.  23 Q. Sure.  24 A. Okay. So if you think of DNA, you  25 see the complicated 3-dimensional molecule.</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Hold on a second before you keep  2 going. So you would deduce -- and when you say  3 you are looking for the rungs that are  4 different, that's the SNP, right?  5 A. Yes. Exactly, yes.  6 Q. If you note that everybody with  7 diabetes has a difference in seven SNPs, then  8 you would suggest then that that's the key to  9 determining whether somebody is likely to have  10 diabetes?  11 A. So it's a probability. The start  12 of your question made it seem like you said for  13 sure. No. It's a probability argument, and  14 seven wouldn't be enough.  15 Q. You would need a lot more than  16 seven?  17 A. Correct. That creates the problem  18 with the sentence.  19 Q. Hold on. So the seven would be  20 ridiculous because, as you just mentioned a  21 moment ago, there are did you say a billion or  22 billions?  23 A. Three billion total, and 3 percent  24 differ across humans, but that's still like a  25 couple million.</p>
<p style="text-align: right;">Page 103</p> <p>1 But if you think of it as just being a ladder,  2 it makes more sense to explain to people.  3 So you have this ladder. It's DNA.  4 Obviously ladders have rungs. So there is  5 3 billion of them in the human genome.  6 Something like 90 percent -- 97 percent are the  7 same across every human being. The 3 percent  8 that differ are what causes me to be short, you  9 to be tall, you to have green eyes, or him to  10 have brown.  11 What you do then is -- this is  12 useful. It might be long winded. First one  13 has to conduct what's called a GWAS study,  14 G-W-A-S, a genome-wide association study. So  15 let's suppose I want to see if diabetes has a  16 genetic basis. What I would do is get two  17 groups of people. This group is not diabetic.  18 This group is diabetic. Then you would scan  19 the genomes of people in each group and look  20 for differences in the rungs, and you would  21 basically sum them. So this third rung is a  22 difference. That's one. Rung 22 is a  23 difference. That's two. The end result is to  24 summarize a score that predicts in this case  25 your propensity for diabetes, but --</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. Right. Right. So the idea that  2 seven SNPs would be responsible for any single  3 manifestation is pretty remote; isn't it?  4 A. So I'm trying to balance between  5 being technically accurate and explaining it to  6 you. For like Mendelian disorders, it could be  7 just one, but we're looking at polygenic stuff.  8 IQ is determined by multiple, multiple genes,  9 so in that context yes.  10 Q. That's helpful. Because there may  11 be certain things where you really only have to  12 look at one gene, and then you're more likely  13 to have fewer SNPs that would show us the  14 difference, right?  15 A. Correct.  16 Q. Because we're dealing with  17 intelligence, do we even know how many genes  18 are associated with intelligence?  19 A. It's a work in progress. So these  20 are revised, and every revision has more SNPs  21 that you can use to scale the score.  22 Q. But at the moment we don't know  23 precisely the number of genes or even the  24 location of genes that are associated with  25 intelligence?</p>

<p style="text-align: right;">Page 106</p> <p>1 A. With certainty, no.</p> <p>2 Q. And that means we can't possibly</p> <p>3 know the number of SNPs that you'd have to find</p> <p>4 differences in in order to make an accurate</p> <p>5 determination of intelligence, right?</p> <p>6 A. I would disagree with that because</p> <p>7 I don't think anyone claims that intelligence</p> <p>8 is 100 percent genetic. There are</p> <p>9 environmental influences that affect it. So</p> <p>10 the best you can do by getting more SNPs is</p> <p>11 increase the reliability of your measure which</p> <p>12 then lets you find -- then you want to</p> <p>13 correlate those PGS scores with like a real</p> <p>14 paper and pencil IQ test.</p> <p>15 Q. I'm sorry. I didn't hear what you</p> <p>16 just said.</p> <p>17 A. Okay. So once you have the genetic</p> <p>18 estimate of IQ, then you want people to take</p> <p>19 actual IQ tests, and then you want to see if</p> <p>20 the genes predict the scores.</p> <p>21 Q. So what were you proposing to do in</p> <p>22 your request which we see as 19747?</p> <p>23 A. So, yeah, you were asking</p> <p>24 specifically about, I believe, the first</p> <p>25 sentence of the second paragraph on page 2. So</p>	<p style="text-align: right;">Page 108</p> <p>1 A. And they were looking at -- well,</p> <p>2 they gave a really good IQ test, a battery of</p> <p>3 tests that we use to calculate the phenotypic</p> <p>4 IQ, the paper and pencil score, and they also</p> <p>5 had their DNA and many other variables like</p> <p>6 gender, age, SES.</p> <p>7 Q. SES, what's that?</p> <p>8 A. Socioeconomic status.</p> <p>9 Q. That was as reported by the parents</p> <p>10 or participants?</p> <p>11 A. I would imagine parents, but I</p> <p>12 would have to go back and look.</p> <p>13 Q. Okay. Go ahead.</p> <p>14 A. Yeah, and the IQ test. So you have</p> <p>15 a spreadsheet with genetic data over here, the</p> <p>16 SNPs and their PGS score, and then you have</p> <p>17 phenotypic data like, well, your IQ test score,</p> <p>18 paper and pencil. I don't know if we had</p> <p>19 income, we didn't, but, you know, like age,</p> <p>20 gender, that kind of stuff.</p> <p>21 Q. So how did you determine the</p> <p>22 ethnicity of the participants?</p> <p>23 A. In that -- so we didn't collect the</p> <p>24 original data. The researchers did it in</p> <p>25 Philadelphia.</p>
<p style="text-align: right;">Page 107</p> <p>1 the problem is when you're scanning the genome</p> <p>2 to try to identify these SNPs, you're doing a</p> <p>3 ton of statistical tests, and often when you do</p> <p>4 a statistical test, you have to worry about</p> <p>5 false alarms. It's a statistically significant</p> <p>6 difference at this rung, but it's a fluke.</p> <p>7 With traditional measures of values</p> <p>8 of significance, it's .05. If you use that and</p> <p>9 you're looking at millions of, you know, rungs,</p> <p>10 you're going to get a lot of false alarms. So</p> <p>11 what you do is you tweak the P value. Instead</p> <p>12 of .05, you might only accept a rung if it's</p> <p>13 got a probability of .001. So that's basically</p> <p>14 what the first part of the second paragraph is</p> <p>15 getting at.</p> <p>16 Q. Okay. What was the nature of the</p> <p>17 TCP data?</p> <p>18 A. Yeah, so it was collected like in</p> <p>19 29 -- 2009 in Philadelphia. It was a bunch of</p> <p>20 like early teenage, I think the age range was</p> <p>21 like eight to 18.</p> <p>22 Q. I think it was eight to 21; does</p> <p>23 that sound right?</p> <p>24 A. Okay. I'd have to check.</p> <p>25 Q. Go ahead.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. I'm aware of that.</p> <p>2 A. Yeah. Could you repeat the</p> <p>3 question?</p> <p>4 Q. How did you determine the ethnicity</p> <p>5 or race of the participants?</p> <p>6 A. Two ways, and this was the point of</p> <p>7 the paper. One, the researchers back then</p> <p>8 asked them.</p> <p>9 Q. They call it SIRE, right?</p> <p>10 A. Self-identified race ethnicity.</p> <p>11 Q. So that information was contained</p> <p>12 in the original NIH data, right?</p> <p>13 A. Correct.</p> <p>14 Q. Go ahead.</p> <p>15 A. And then we had to do what's called</p> <p>16 admixture analysis to get a genetic estimate of</p> <p>17 ancestry which is different from</p> <p>18 self-identified race ethnicity.</p> <p>19 Q. How did you do that?</p> <p>20 A. It's a statistical technique.</p> <p>21 Basically it clusters people into the origin of</p> <p>22 ancestry. It's a complicated technique, but</p> <p>23 basically you can say that Joe here is</p> <p>24 75 percent white ancestry, maybe 20 percent</p> <p>25 African, and 5 percent something else.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q. How do you determine that?</p> <p>2 A. It's called factor analysis</p> <p>3 principal components analysis. I wonder if we</p> <p>4 have a plot? Can I show you the Lasker paper?</p> <p>5 You can see a plot of it.</p> <p>6 Q. Okay.</p> <p>7 A. Which exhibit is that?</p> <p>8 Q. It's Exhibit 2 or 3.</p> <p>9 A. Yeah, here it is. Okay. So look</p> <p>10 at page 436.</p> <p>11 Q. I lost my own. Page 436 of</p> <p>12 Exhibit 3?</p> <p>13 A. Correct. Okay. So this plots</p> <p>14 admixture analysis results on the X axis. So,</p> <p>15 you know, for any subject in that study, we</p> <p>16 would know from zero to 100 percent how much</p> <p>17 European ancestry they have, and then we're</p> <p>18 plotting that against the self-report, the</p> <p>19 SIRE, on the Y axis. As you can see, it maps</p> <p>20 on very nicely.</p> <p>21 For example, the probability that</p> <p>22 you have no European ancestry but you</p> <p>23 self-identify as -- well, can I reverse that?</p> <p>24 European ancestry -- wait a minute.</p> <p>25 Yeah, so the probability that you</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Okay. I'll wait then.</p> <p>2 Q. No, that's all right. You can tell</p> <p>3 me now. What happened in that part of the</p> <p>4 study.</p> <p>5 A. Okay. So the 2009 data set, can we</p> <p>6 just call it PNC to not be confusing?</p> <p>7 Q. Sure.</p> <p>8 A. So the PNC original data set</p> <p>9 didn't -- it had self-identified race, but it</p> <p>10 didn't have measures of eye color, hair color,</p> <p>11 or skin color.</p> <p>12 Q. Just let me interrupt you for one</p> <p>13 second, and then we'll go back to that. It</p> <p>14 also didn't do the admixture analysis that you</p> <p>15 just described?</p> <p>16 A. No.</p> <p>17 Q. So now proceed. So it didn't have</p> <p>18 eye, skin, or hair color?</p> <p>19 A. Correct. And so there is a theory</p> <p>20 about race IQ gaps called colorism, and it's</p> <p>21 totally environmental. It's due to</p> <p>22 discrimination, the race IQ gap, and so it</p> <p>23 predicts that the darker your skin, the more</p> <p>24 discrimination you'll experience.</p> <p>25 So we wanted to pit that social</p>
<p style="text-align: right;">Page 111</p> <p>1 have zero European ancestry and report being</p> <p>2 black is essentially zero. That's on the left</p> <p>3 side of the graph. On the right side, if your</p> <p>4 European ancestry is 100 percent, then you can</p> <p>5 see this top curve, there is 100 percent chance</p> <p>6 or pretty close to it that you self-identify as</p> <p>7 white or European.</p> <p>8 Q. What is a PNC data set?</p> <p>9 A. PNC. Oh, the data set that was</p> <p>10 collected in Philadelphia in '09 or whatever,</p> <p>11 the Philadelphia neurodevelopmental cohort, but</p> <p>12 that's the TCP data. I know it's confusing.</p> <p>13 Q. But how did you determine what the</p> <p>14 admixture results were?</p> <p>15 A. It's -- it looks at the SNPs, and</p> <p>16 so people who are predominantly African would</p> <p>17 light up a different set of SNPs than people</p> <p>18 who are predominantly white or any other</p> <p>19 ethnicity or race that you want to look at.</p> <p>20 And you can see that on page, I</p> <p>21 want to make sure -- no, that's not going to</p> <p>22 help us. We'll probably get to it. But did</p> <p>23 that answer your question?</p> <p>24 Q. Well, if you're getting to the skin</p> <p>25 color reference, that is where I'm going.</p>	<p style="text-align: right;">Page 113</p> <p>1 construct of race against genetic ancestry,</p> <p>2 DNA, to see which best predicted the paper and</p> <p>3 pencil gap.</p> <p>4 Q. Okay. So what does eye, hair, and</p> <p>5 skin color have to do with it?</p> <p>6 A. So colorism is not my theory. We</p> <p>7 tested it. But if you're a colorist theorist,</p> <p>8 then you predict that IQ scores will decrease</p> <p>9 with darker skin tones, not because of</p> <p>10 genetics, but because they experience more</p> <p>11 discrimination.</p> <p>12 Q. And how did you determine the eye,</p> <p>13 hair, and skin color?</p> <p>14 A. Yes, this was a mistake. We</p> <p>15 uploaded it to a server, but I had an</p> <p>16 oversight. I didn't report it in this</p> <p>17 application. But there is a server, HIrisPlex</p> <p>18 that you can input I think it's like 32 SNPs,</p> <p>19 which is not enough to identify people, but it</p> <p>20 is enough to reliably predict color of hair,</p> <p>21 eye, and skin.</p> <p>22 Q. And so then what happened?</p> <p>23 A. So then we put it all into a model,</p> <p>24 and that was the table I was going to show you.</p> <p>25 Yeah, it's on page 438.</p>

<p style="text-align: right;">Page 114</p> <p>1 Q. Okay. That's the one I'm looking 2 at. So what does the chart on 438 tell us? 3 A. Okay. So on the X axis is genetic 4 ancestry. So you're either not at all European 5 or 100 percent European, and this is sort of a 6 validation check under skin color measures. On 7 the Y axis is skin color, and you can see, if 8 you look at European ancestry equals zero, then 9 your skin color is pretty dark which makes 10 sense. If your skin color is pretty dark, 11 you're probably not European. On the other 12 extreme, if you're 100 percent European, your 13 skin is much lighter. So this graph shows that 14 the skin color has some reliability. 15 Then we combine all this. Now we 16 have all our measures calculated. Now we run 17 the analysis to see. We have your IQ score. 18 We know on the environmental side your 19 self-identified race -- race is just a social 20 construct, I agree with that -- and predictions 21 from colorism theory, that's the environmental 22 side. On the other side, the genetic side, you 23 have these PGS scores. So you enter them both 24 predicting paper and pencil IQ scores and see 25 what wins.</p>	<p style="text-align: right;">Page 116</p> <p>1 agreed to call the transracial -- 2 A. Validity. 3 Q. -- validity, that the concepts 4 you've just described, most of them are in here 5 somewhere; aren't they? 6 A. In where? 7 MR. KELLY: Objection to the form 8 of the question, ambiguous. 9 Q. In your research use statement. 10 A. What I just explained to you? 11 Q. Right. 12 A. Yes. Did you want me to go to the 13 third paragraph? 14 Q. Sure. I didn't mean to cut you 15 off. If you want to say more about the use 16 statement, by all means. 17 A. Okay. If you look in the third 18 paragraph on page 2 of Exhibit -- let me 19 straighten out my documents here -- page 2 of 20 Exhibit 12, third paragraph, now, this is where 21 lack of expertise I think hurt me. Transethnic 22 validity, you can't do that analysis unless you 23 compare races. I mean, the word trans there 24 indicates that. So we're using the TCP data 25 set.</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. And what won? 2 A. They both do. 3 Q. You said they both do. There were 4 three. 5 A. So, well, we lumped colorism and 6 skin color together as one camp or hypothesis 7 and the PGS DNA stuff as the other camp or 8 hypothesis, entered them into a regression 9 model predicting phenotypic IQ, and both were 10 significant, meaning each has some influence on 11 the IQ gaps. But, if I remember correctly, the 12 genetic side was a little higher in this study. 13 Q. Okay. You believe that in 14 Exhibit 12 you told the NIH those were the 15 things that you wanted to do and to study with 16 respect to the TCP data? 17 A. Yeah. But I think if you 18 lack -- this goes back to an earlier point. If 19 you lack expertise in this area, I don't know 20 that you would get that. 21 Q. But clearly, however, your request 22 in 19747 -- 23 A. Is this Exhibit 12? Okay. 24 Q. Clearly your request in Exhibit 12 25 which is identified as 19747 which I think we</p>	<p style="text-align: right;">Page 117</p> <p>1 Okay, here's another thing, 2 educational attainment. I'm sorry. The second 3 sentence, educational attainment is the same 4 thing as intelligence in the literature. I 5 don't know if anybody knew that. So just right 6 off the bat there are three things that mention 7 IQ. If you'd like to, you can look at it. PGS 8 and cognitive ability, the end of the third 9 line; cognitive data, end of the fourth line; 10 general and broad ability indexes, the start of 11 the fifth line; demographic data. Yeah, so, I 12 mean, it's all over the place in that 13 paragraph. 14 Q. Okay. Did you do anything with 15 schizophrenia? 16 A. No. We -- I started with the sex 17 difference paper, didn't work, closed it out, 18 and we decided to do this before the 19 schizophrenia paper. 20 Q. Why did you include schizophrenia 21 in the use statement? 22 A. Well, we wanted to be open to 23 looking at it. We just never got around to it 24 because everything blew up. 25 Q. Got it.</p>



<p style="text-align: right;">Page 118</p> <p>1           - - - - -</p> <p>2           (Thereupon, Deposition Exhibit 13,</p> <p>3           Project Renewal Request for Project</p> <p>4           19747, was marked for purposes of</p> <p>5           identification.)</p> <p>6           - - - - -</p> <p>7           Q. Dr. Pesta, you've been handed</p> <p>8           Exhibit 13. Will you confirm for me that this</p> <p>9           is the renewal application for project 19747</p> <p>10          for which we used the nomenclature transracial</p> <p>11          validity?</p> <p>12          A. Yes.</p> <p>13          Q. That request date says</p> <p>14          December 3rd, 2019; is that right?</p> <p>15          A. Correct.</p> <p>16          Q. Let's make sure that that's</p> <p>17          consistent with your table.</p> <p>18          A. It is.</p> <p>19          Q. It is, okay. So we've got the</p> <p>20          table all right thus far, right?</p> <p>21          A. Correct.</p> <p>22          Q. So now I'd like to look at and do a</p> <p>23          little comparison of the two project renewals.</p> <p>24          A. Okay.</p> <p>25          Q. So I want you to have Exhibit 11</p>	<p style="text-align: right;">Page 120</p> <p>1    Because it says --</p> <p>2           A. Yes.</p> <p>3           Q. -- right there research summaries,</p> <p>4           scientific presentations, publications,</p> <p>5           intellectual property.</p> <p>6           A. Well, we did this on line. I mean,</p> <p>7           we can -- my colleague, John, will testify to</p> <p>8           this, too. It said for renewals just report</p> <p>9           official publications on line. For closeouts</p> <p>10          it said report everything.</p> <p>11          Q. All right. And I believe you've</p> <p>12          taken the position that because the Lasker</p> <p>13          paper was not published until August 30th and</p> <p>14          you made your renewal request on August 29th,</p> <p>15          both of 2019, you did not report the paper,</p> <p>16          correct?</p> <p>17          A. Yeah. We weren't sneaking anything</p> <p>18          by it. It wasn't officially published. NIH</p> <p>19          policy says report officially published</p> <p>20          articles. We didn't have it. We knew it was</p> <p>21          accepted, but it wasn't officially published,</p> <p>22          so we didn't report it.</p> <p>23          Q. But you did report the Lasker paper</p> <p>24          when you closed out 19090, the admixture</p> <p>25          analysis, when you closed out that project,</p>
<p style="text-align: right;">Page 119</p> <p>1    and Exhibit 13 in front of you.</p> <p>2           A. Got it.</p> <p>3           Q. With regard to Exhibit 11 which is</p> <p>4           the admixture analysis --</p> <p>5           A. Correct.</p> <p>6           Q. -- this project renewal asks you to</p> <p>7           say what your research progress is including</p> <p>8           whether you've done any scientific</p> <p>9           presentations or publications, right?</p> <p>10          A. No. I disagree with that. When we</p> <p>11          did -- I think they changed their policy partly</p> <p>12          because of what happened with me. This is a</p> <p>13          renewal. We saw it on line. We very carefully</p> <p>14          followed it. When it's a renewal, they only</p> <p>15          want officially published articles. They don't</p> <p>16          want -- which makes sense. They don't want</p> <p>17          preprints. They don't want presentations.</p> <p>18          They just want official publications.</p> <p>19          Q. So you are saying you weren't asked</p> <p>20          for scientific presentations or research</p> <p>21          summaries?</p> <p>22          A. Only for closeouts, not for</p> <p>23          renewals.</p> <p>24          Q. Are you saying then that this form</p> <p>25          is wrong, you weren't asked for those things?</p>	<p style="text-align: right;">Page 121</p> <p>1    right?</p> <p>2           A. Well, so our interpretation was</p> <p>3           it's all TCP data, all these applications. So</p> <p>4           when we went to close that one out, it said</p> <p>5           report everything from using the TCP data. So</p> <p>6           we reported it on the wrong form, but we really</p> <p>7           just followed verbatim what the NIH wanted.</p> <p>8           Q. But that was, according to your</p> <p>9           Table 1, that was reported at the closeout on</p> <p>10          August 31st, 2021, right?</p> <p>11          A. I think 2020, correct?</p> <p>12          Q. I'm sorry. You're right. Thank</p> <p>13          you for that correction. August 31st, 2020.</p> <p>14          A. Correct.</p> <p>15          Q. Now let's look again at Exhibit 13</p> <p>16          which is 19747, and you made that renewal</p> <p>17          request on December 3rd, 2019, right?</p> <p>18          A. Correct.</p> <p>19          Q. Okay. And the project renewal</p> <p>20          form, and I'm looking at page 3 of Exhibit 13,</p> <p>21          says, "Research Summary: We have no new</p> <p>22          publications nor submissions from this data</p> <p>23          set. We are waiting to hear back from NIH as</p> <p>24          to whether we are still able to use this. We</p> <p>25          were told not to run further analyses until we</p>

<p style="text-align: right;">Page 122</p> <p>1 had heard back." Then for scientific  2 presentations it says none, publications none,  3 intellectual property none.  4 First of all, have I read that  5 correctly of what you reported?  6 A. Yes.  7 Q. So this renewal was on  8 December 3rd, 2019. Why didn't you report the  9 Lasker paper?  10 A. Yeah, this is complicated. If you  11 look at footnote B, it's all laid out there.  12 I'll try to summarize it.  13 Q. Okay.  14 A. One year after having it, renew,  15 closeout. Renew says just publications,  16 official publications. Closeout says report  17 everything. And with that in mind, what date  18 was that, 8-31? So I was closing out the  19 application on 8-31-20. Is that consistent  20 with what this says?  21 Because I was closing it out, I  22 should have reported everything, but in this  23 interim -- so Lasker was -- so we renew on the  24 29th 070.  25 Q. Yes. Not 070. It was 090.</p>	<p style="text-align: right;">Page 124</p> <p>1 19090 which is the admixture analysis?  2 A. Correct.  3 Q. Which you made a renewal on  4 August 29, '19. You did not cite the Lasker  5 paper?  6 A. Because it wasn't officially  7 published.  8 Q. Because it wasn't officially  9 published until the following day?  10 A. Correct.  11 Q. Then for the 9-19-18, which is the  12 transracial validity paper, which, by the way,  13 that use statement you'll agree with me comes  14 closest to what is described in the Lasker  15 paper; do you agree?  16 A. Yes.  17 Q. And that you made a renewal of  18 December 3rd, 2019, but you didn't report the  19 Lasker paper on December 3rd, 2019; did you?  20 A. Because there is a reason for that,  21 I think it's in the footnote, but let me see if  22 I can refigure it out, but that's an important  23 point.  24 MR. KELLY: Take your time.  25 THE WITNESS: Yeah.</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Thank you, 090. So we had our  2 renewal in. The next thing we had to do -- can  3 I refresh my memory?  4 Q. Sure.  5 A. Okay. Note C there is consistent  6 with what I just said. So on 8-31-20 -- is  7 this the right thing? Just double-checking.  8 Yeah, we went to close out -- I'm confusing  9 myself. Can we take a break? Maybe I'm --  10 Q. Hold on a minute. Let's work  11 through this.  12 A. Okay.  13 Q. So on your Table 1 -- let's just  14 take it. We don't have anything in front of us  15 to show the closeouts, but let's just use your  16 Table 1 as the dates.  17 A. Okay.  18 Q. So the 18007 which is the first  19 request for NIH data, that's the sex  20 differences, and when I say NIH data I should  21 be clear, the TCP data, that you never made a  22 renewal. You closed that on June 25th, 2019.  23 A. And there was nothing to report  24 because Lasker wasn't published.  25 Q. Okay. Then the next thing is the</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Can you throw out those dates again  2 while I'm reading?  3 Q. Sure. I'm just reading your  4 Table 1 that says 090 renewal was August 29th.  5 A. Okay.  6 Q. And we know there wasn't a report,  7 but you've described why, meaning there wasn't  8 a report of the Lasker paper, but you've  9 described why.  10 A. Renewal versus closeout, yes.  11 Q. Yes. And because the publication  12 hadn't happened until after.  13 A. We renewed that one.  14 Q. Correct. And now we're looking at  15 19747, the transracial validity use statement.  16 That renewal was December 3rd, 2019, but there  17 was no report of the Lasker paper.  18 A. Yeah. So, I'm sorry, I didn't spot  19 this earlier, but it's the second to last full  20 paragraph on the back. They last approved our  21 use of the TCP data on the renewal of what  22 we're calling the admixture analysis one, so  23 there was nothing to report. It was like a  24 fuzzy time window.  25 Q. How is that a fuzzy time window?</p>



<p style="text-align: right;">Page 126</p> <p>1 A. Because the complication here is</p> <p>2 that these are the same data identical for all</p> <p>3 three applications, but when you close out this</p> <p>4 one that's maybe not IQ related, it says report</p> <p>5 this stuff about the TCP data. It's hard to</p> <p>6 explain.</p> <p>7 Q. So I want to get this straight,</p> <p>8 Dr. Pesta.</p> <p>9 A. Sure.</p> <p>10 Q. Your contention is the reason why</p> <p>11 we didn't report Lasker on the 090 is because</p> <p>12 the paper was published a day later?</p> <p>13 A. It looks like two days.</p> <p>14 Q. Okay, two days. The reason why we</p> <p>15 didn't report it on --</p> <p>16 A. 12-3-19.</p> <p>17 Q. -- the 747 which is a couple of</p> <p>18 months after Lasker is published, right?</p> <p>19 A. Correct.</p> <p>20 Q. Is because we hadn't reported it on</p> <p>21 the earlier?</p> <p>22 A. Could you maybe take a minute to</p> <p>23 read that second to last paragraph?</p> <p>24 Q. Actually, I have read that</p> <p>25 paragraph because you've written this in other</p>	<p style="text-align: right;">Page 128</p> <p>1 closeout when they clearly want to know at</p> <p>2 renewal time whether there has been any papers</p> <p>3 published?</p> <p>4 MR. KELLY: Objection to form.</p> <p>5 A. Only official. Only official</p> <p>6 publications for renewals.</p> <p>7 Q. Okay. I'm giving you that. For</p> <p>8 purposes of this discussion, I'll give you that</p> <p>9 the publication was two days later, so arguably</p> <p>10 you didn't have to do it with respect to that.</p> <p>11 A. Okay.</p> <p>12 Q. But your explanation for why it</p> <p>13 wasn't reported with respect to 747 is because</p> <p>14 you had already renewed it without describing</p> <p>15 the paper?</p> <p>16 A. This date, 12-3, was after this all</p> <p>17 blew up. NIH was complaining to me. My job</p> <p>18 was probably threatened at that point even. So</p> <p>19 we wanted to make sure we followed these things</p> <p>20 verbatim so that nobody could come back and</p> <p>21 raise questions like this. So I'm going to try</p> <p>22 to explain this clearly. Give me like 30</p> <p>23 seconds to put it together.</p> <p>24 Okay. So on 9-23-19 the NIH, that</p> <p>25 was the last time they approved a TCP data set</p>
<p style="text-align: right;">Page 127</p> <p>1 documents.</p> <p>2 A. I'm sure I did, yes.</p> <p>3 Q. And I don't understand it, and I'm</p> <p>4 trying to understand it. I don't understand</p> <p>5 how if the point of this request by NIH is to</p> <p>6 know what papers are being published using this</p> <p>7 data how it's possible to on the one hand not</p> <p>8 report the data because the paper is published</p> <p>9 a day later, but the next time you have a</p> <p>10 renewal, you also don't report the paper well</p> <p>11 after the paper has been published?</p> <p>12 A. Yeah, and it's explained right</p> <p>13 there. Okay. On 12-3 -- well, let me try to</p> <p>14 make it clear. I didn't know this was going to</p> <p>15 be unclear.</p> <p>16 On 12-3-19 I applied to renew 747,</p> <p>17 the transracial guy. When we did that,</p> <p>18 verbatim NIH required me to report any official</p> <p>19 publications, and you see how I underline it,</p> <p>20 since NIH last approved use of the TCP data.</p> <p>21 That was after Lasker was published. So if you</p> <p>22 follow this verbatim, I didn't -- I'm not being</p> <p>23 sneaky. We were just getting --</p> <p>24 Q. Dr. Pesta, do you believe the NIH</p> <p>25 means by this just don't tell us about it until</p>	<p style="text-align: right;">Page 129</p> <p>1 renewal or closeout, but Lasker was published</p> <p>2 before that. So if you follow verbatim what</p> <p>3 they said, we didn't need to report it.</p> <p>4 MR. KELLY: Well --</p> <p>5 Q. Say that again.</p> <p>6 MR. KELLY: This is -- don't get</p> <p>7 worried about this.</p> <p>8 THE WITNESS: Who, me?</p> <p>9 MR. KELLY: Yes.</p> <p>10 THE WITNESS: Worried about?</p> <p>11 MR. KELLY: You're just very</p> <p>12 anxious.</p> <p>13 THE WITNESS: Yeah, I'm a hyper</p> <p>14 person, and I'm kind of hungry and tired, but I</p> <p>15 agree we should get through this question.</p> <p>16 Q. All right. So as I understand what</p> <p>17 that paragraph says -- let's read the</p> <p>18 paragraph.</p> <p>19 A. Can I see it?</p> <p>20 Q. "Earlier on December 3, 2019, BJP</p> <p>21 applied" -- that's you, right?</p> <p>22 A. Correct.</p> <p>23 Q. -- "applied to renew 9747. Here</p> <p>24 verbatim NIH required BJP to report any</p> <p>25 official publications since NIH last approved</p>

<p style="text-align: right;">Page 130</p> <p>1 his use of the TCP data. The last NIH 2 approval, however, was for 19090 on 3 September 23rd, 2019. Since Lasker was 4 published prior to this date, BJP appropriately 5 did not report it for the renewal of 19747." 6 A. Exactly. I don't know how to say 7 it better. 8 Q. If you ask me, what you're doing 9 here is you're reading together all three of 10 the requests, right? 11 A. You have to. It's the same data. 12 So even if I'm working on the sex project, for 13 example, when I go to renew the transracial 14 one, I have to report stuff related to the sex 15 one, too, because it's the same data set. 16 Q. So we're reading it all together, 17 and that's why you didn't have to report it 18 until the first closeout report which isn't 19 until August 31st, 2020, like nine months 20 later, right? 21 A. I didn't report it because the NIH, 22 if you follow what they said verbatim, anything 23 since the last approval by NIH. The last 24 approval was on 9-23-19. Lasker was published 25 on what, 8-30? I shouldn't have reported it.</p>	<p style="text-align: right;">Page 132</p> <p>1 differences one. I never downloaded the data 2 for it. 3 Q. Aren't we supposed to read these 4 all together, Dr. Pesta? 5 A. I thought I was just doing that. 6 MR. KELLY: Okay. The 7 question is -- it's up to you, but the question 8 has been answered now. It's 12:46. 9 MS. GIFFEN: I'm fine to take a 10 break. 11 MR. KELLY: Thank you. How long do 12 you guys want to break for lunch? 13 MS. GIFFEN: There is so much more 14 to go. Off the record. 15 (Luncheon recess taken.) 16 - - - - 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. Do you remember when CSU -- 2 A. Am I -- 3 MR. KELLY: It's just -- 4 Q. Just answer the question. Do you 5 remember when CSU asked you what you were going 6 to do with the TCP dataset, and you replied 7 that you were going to put it on your CSU 8 computer behind the firewall, and you were 9 going to be the only person using it? 10 A. That's a -- that's wrong, patently 11 wrong. It's in the binder and maybe even the 12 final report in two places that I was going to 13 use it at my home locked up to my desk, no 14 internet access except to get the data 15 initially, so it was approved. 16 And there is two examples of that 17 in it's either Exhibit 5, and I don't think we 18 have the binder as an exhibit yet. 19 Q. So -- 20 A. And moreover, to answer your 21 question, that -- it was the provost who said 22 that, she quoted it in my discipline letter, 23 you're the one who wrote to Terri Kocevar that 24 only you will have access, and blah, blah, 25 blah. That was my first application, the sex</p>	<p style="text-align: right;">Page 133</p> <p>1 AFTERNOON SESSION 2 CONTINUED EXAMINATION OF BRYAN J. PESTA 3 BY MS. GIFFEN: 4 Q. Dr. Pesta, we had discussed both 5 the description of the research use statements 6 that we went over, and we also discussed the 7 timing of the report to NIH about the Lasker 8 paper on your submissions, and you have 9 provided to us Exhibit -- 10 A. Eleven I think it was. 11 Q. There is two of them. I should 12 have pulled them out. 13 A. One is six. 14 Q. You just passed it. The one with 15 your table on it. I'm sorry I didn't note 16 this. 17 A. It's not a big deal. Did you -- 18 Q. It's there for sure. Keep going. 19 MS. KAMINSKI: Six and 10. 20 Q. It's 6 and 10. So you brought with 21 you Exhibit 6 and 10 that refer to those 22 subjects. Did you have anything more you 23 wanted to add to that? 24 A. I think I was confusing explaining 25 the timeline. I don't think you want to</p>

<p style="text-align: right;">Page 134</p> <p>1 revisit it. I'm happy to, though, if you do.</p> <p>2 Q. That's okay. I'm satisfied if</p> <p>3 you're satisfied with what you said.</p> <p>4 A. Okay.</p> <p>5 Q. I now want to turn to a question,</p> <p>6 you mentioned earlier that you told NIH that</p> <p>7 you were going to put the data onto a home</p> <p>8 computer.</p> <p>9 A. Correct.</p> <p>10 Q. And you made mention of an occasion</p> <p>11 where you knew that that was part of the</p> <p>12 record. I want to ask you if this is what you</p> <p>13 were referring to.</p> <p>14 - - - - -</p> <p>15 (Thereupon, Deposition Exhibit 14,</p> <p>16 Project Request 26271, was marked</p> <p>17 for purposes of identification.)</p> <p>18 - - - - -</p> <p>19 MR. KELLY: Object to the form of</p> <p>20 the question. I don't know that he testified</p> <p>21 to that. You can answer.</p> <p>22 A. I'm sorry. Could you repeat that?</p> <p>23 Q. She's getting it. Handing you</p> <p>24 what's been marked as Exhibit 14, do you</p> <p>25 recognize that as the project request for</p>	<p style="text-align: right;">Page 136</p> <p>1 the protocols outlined in the link above."</p> <p>2 Do you recall that?</p> <p>3 A. Yes.</p> <p>4 Q. Is that what you were referring to</p> <p>5 earlier?</p> <p>6 A. There is another one, but yes.</p> <p>7 Q. When was the other one?</p> <p>8 A. There was another one. I tried to</p> <p>9 find it, but I couldn't. This is Add Health.</p> <p>10 Probably ABCD. I don't know what the number</p> <p>11 was.</p> <p>12 Q. ABCD was?</p> <p>13 A. A different non-TCP data set.</p> <p>14 Q. We'll get that date. You submitted</p> <p>15 that request around August of 2020. Does that</p> <p>16 sound right?</p> <p>17 A. So looking at my tabled footnotes,</p> <p>18 is that 026? Oh, 7-4-20, yes.</p> <p>19 Q. All right. Did that</p> <p>20 relate -- neither the project request that</p> <p>21 we're looking at, Exhibit 14, nor the project</p> <p>22 request with respect to ABCD relate to the TCP</p> <p>23 data; is that true?</p> <p>24 A. They are all dbGaP, but not TCP.</p> <p>25 - - - - -</p>
<p style="text-align: right;">Page 135</p> <p>1 262710, that being the project ID number?</p> <p>2 A. I don't think there is a zero at</p> <p>3 the end, or it's blocked out here. But, yes,</p> <p>4 this is it.</p> <p>5 Q. The request date is July 16th of</p> <p>6 2020, correct?</p> <p>7 A. Correct.</p> <p>8 Q. What data is being requested in</p> <p>9 this NIH project request?</p> <p>10 A. It's a different data set. It's</p> <p>11 not TCP. It's called Add Health.</p> <p>12 Q. And it's capital A, D-D, capital H?</p> <p>13 A. It's adolescent something</p> <p>14 development.</p> <p>15 Q. In your research use statement on</p> <p>16 page 2 of the document, you write, "To meet the</p> <p>17 Add Health secure storage and handling</p> <p>18 requirements, we plan to follow the steps</p> <p>19 outlined in the following link." Then there is</p> <p>20 a reference to a link. "Specifically we plan</p> <p>21 to store the data on a desktop model hard</p> <p>22 drive. This will be kept in a locked cabinet</p> <p>23 at Bryan J Pesta, the investigator's, home</p> <p>24 office. All analyses will be conducted on a</p> <p>25 desktop in the investigator's home, following</p>	<p style="text-align: right;">Page 137</p> <p>1 (Thereupon, Deposition Exhibit 15,</p> <p>2 an Email String with Attachments,</p> <p>3 was marked for purposes of</p> <p>4 identification.)</p> <p>5 - - - - -</p> <p>6 Q. Dr. Pesta, I'm handing you what's</p> <p>7 been marked as Exhibit 15. This is I believe</p> <p>8 the communication with Terri Kocovar that you</p> <p>9 referred to in your earlier testimony. First</p> <p>10 of all, can you confirm that? You can take a</p> <p>11 minute to read through it if you need to.</p> <p>12 A. Uh-huh. Yes.</p> <p>13 Q. Okay. And if we work from</p> <p>14 backwards to forwards, which is always</p> <p>15 confusing, the first email is actually between</p> <p>16 Lisa Franklin and Jack Kraszewski?</p> <p>17 MR. NEEL: Kraszewski.</p> <p>18 A. Page 4 of 5?</p> <p>19 Q. Page 4 of 5. Five is the request</p> <p>20 that Lisa is making, right?</p> <p>21 A. Correct.</p> <p>22 Q. And then there is an email that is</p> <p>23 forwarding it to Jack, and then Jack responds</p> <p>24 on April 13th and says that he doesn't know</p> <p>25 whether we can confirm the data use certificate</p>

<p style="text-align: right;">Page 138</p> <p>1 because we don't know the answers to these 2 questions, right? 3 A. Yes. 4 Q. And then on April 17th, Mary 5 Kocevar -- or actually I think she goes by 6 Terri? 7 A. Terri. 8 Q. Sends the questions to you, right? 9 A. Correct. 10 Q. So the first request for that 11 information -- well, there is only four days 12 difference between those two, and then on it 13 looks like April 18th you respond, right? 14 A. 2018, where is that? Yes. Wait a 15 minute. Are you on page 1? I'm sorry. 16 Q. Yes. Page 1 at the very bottom, 17 that's your response. 18 A. Gotcha. 19 Q. Beginning of your response email. 20 Item No. 4 says, "I will be the only one who 21 has access to these data. They will be stored 22 on my CSU computer which is password and 23 firewall protected," right? 24 A. Yes. 25 Q. And then Terri then saves that to</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. I understand. But you did download 2 TCP data into the home computer? 3 A. Oh, sure, yes. 4 Q. Is there any record of you telling 5 CSU between your communication of May of 2018 6 and July of 2020 that you had sensitive data, 7 restricted access data, on the home computer? 8 A. I couldn't find it, but I thought I 9 had approval. That's my memory. I did search 10 for it. 11 Q. Okay. And, in fact, the two 12 instances we just discussed was the ABCD data 13 and the Add Health data, not TCP, correct? 14 A. Correct. We didn't check the ABCD, 15 or did we do that already? I assume there's a 16 similar line on the ABCD data. 17 Q. We didn't check it. I'm going with 18 you that it's in there, okay? But that does 19 relate to a different data set, correct? 20 A. DbGaP, different data set. 21 Q. Okay. What was the computer 22 specifically that you purchased? 23 A. A desktop. We built it, so it was 24 off Newegg I think it's called. 25 Q. Say it again?</p>
<p style="text-align: right;">Page 139</p> <p>1 the file on May 2nd, 2018, correct? 2 A. Correct. 3 Q. So this related specifically at the 4 time, and the timing is right if we look back 5 to when you were making requests, to the sex 6 differences requests for the TCP data, correct? 7 A. Yes. It's within a couple days of 8 the application that I sent. 9 Q. Okay. Do you have any record that 10 you told anybody at CSU that you were going to 11 keep the data, the TCP data -- 12 A. Well -- 13 Q. Let me finish the question. 14 A. Uh-huh. 15 Q. That you were going to keep the TCP 16 data on your home computer between when you 17 communicate with MaryTherese Kocevar on 18 May 2nd, 2018, until you reported in July of 19 2020? 20 A. I didn't download data for this 21 project, so there was nothing to store, genetic 22 data. 23 Q. But there is -- but you did 24 download TCP data, right? 25 A. Not for this project.</p>	<p style="text-align: right;">Page 141</p> <p>1 A. Newegg, E-G-G. It's on line. 2 Q. New A-G-G? 3 A. Egg, like crack an egg. 4 Q. And correct me if I'm wrong, but I 5 understand the reason why you wanted to put 6 this on the desktop is because the computing 7 power that was available to you at CSU wasn't 8 sufficient to do what you needed to do? 9 A. Yeah. I was supplied with a CSU 10 laptop, and it just didn't have the processing 11 power. 12 Q. Why didn't you ask anyone at CSU to 13 get you equipment that would? 14 A. I mean, I don't know. It was 15 just -- plus it was more convenient to do at 16 home. I remember getting permission. I just 17 don't have proof of it. 18 Q. Pardon me? 19 A. I'm pretty sure I got permission to 20 do this, but I don't -- I can't show you a 21 document. 22 Q. Who did you get it from? 23 A. I'd have to go back. I don't know. 24 Q. So what was the computing power of 25 the Newegg?</p>

<p style="text-align: right;">Page 142</p> <p>1 A. It was an Intel IA Core I want to 2 say 9. It might have been a 7. 3 Q. Was the problem with the laptop 4 that it wouldn't do the tasks or that it would 5 take forever? 6 A. Well, even on the new computer, the 7 powerful one, it literally took ten days to 8 download the data running non-stop. 9 Q. How did you physically -- how did 10 you download the data? 11 A. Once NIH approves you for any 12 project, you go into it, and it's -- extracting 13 it was a pain in the neck. There is several 14 steps you take, and then it downloads. 15 Q. So was it downloaded directly onto 16 that desktop, the Newegg? 17 A. Correct. 18 Q. When did you actually begin working 19 with the data? 20 A. Can I look at these notes of the 21 dates? 22 Q. Sure. 23 A. So we didn't download the data for 24 the sex difference one. It looks like we got 25 approved for 19090 which we're calling mental</p>	<p style="text-align: right;">Page 144</p> <p>1 mean, I guess I could have done it at CSU, but 2 not on my laptop. 3 Q. Yes, and then it could have been 4 physically transferred; couldn't it? 5 A. I didn't know this was going to 6 blow up three years later. I just tried to 7 follow the rules. 8 Q. Because you knew the rules were 9 important, right? 10 A. Yeah, and this is my first rodeo 11 for this. 12 Q. Was it the first rodeo for John 13 Fuerst? 14 A. He doesn't have an affiliation, so 15 I assume so. I don't know. With CSU, yes. 16 Q. Do you know whether John Fuerst 17 ever got NIH data before the Lasker paper? 18 A. I don't know. 19 Q. Okay. So do you still have the 20 Newegg? 21 A. We reformatted the hard drive when 22 everything was closed out. It's in my 23 basement. I don't even know if it's 24 operational. 25 Q. You described that computer as</p>
<p style="text-align: right;">Page 143</p> <p>1 health or admixture on 7-15, so I would say 2 maybe it takes a month or no more than six 3 weeks for the NIH to approve it, so I would 4 guess the end of August. That's a guess. 5 Q. End of August 2018? 6 A. Correct. 7 Q. So my understanding is the desktop 8 was not connected to the internet, right? 9 A. It had to be to download the data. 10 Thereafter we took it off. 11 Q. Okay. So it had the capacity to be 12 on the internet obviously? 13 A. Well, yeah. That's the only way 14 you can get the data. 15 Q. How comfortable are you with the 16 download itself, that that was secure? 17 A. Well, indirectly they approved it 18 for ABCD and Add Health, both CSU and NIH. 19 They didn't have a problem with it, albeit 20 those are different data sets, but it's the 21 same thing. 22 Q. So do you have any other basis for 23 concluding that that was an acceptable way to 24 download the data? 25 A. What else could I have done? I</p>	<p style="text-align: right;">Page 145</p> <p>1 being owned by HBD -- 2 A. PDF, Human Phenome, P-H-E-N-O-M-E 3 Diversity Foundation, HPDF. 4 Q. Which we're going to talk about? 5 A. Uh-huh. 6 Q. So HPDF owns that computer. When 7 you built it, did you only build the computing 8 portion? Did you have to get the display, 9 keyboards, et cetera? 10 A. No. 11 Q. Peripherals? 12 A. No. I just have a main desktop 13 computer. My personal one, the Newegg one was 14 sitting behind the desk, so I just, you know, 15 plugged in the keyboards whenever I wanted to 16 use it. 17 Q. Got it. You just said a second ago 18 we reformatted the hard drive of the Newegg. 19 Who is we? 20 A. Actually, it was me. But we, I 21 mean, we worked on this as a project, but the 22 physical act of reformatting (indicating). 23 Q. And when you say we worked on this 24 as a project, you're talking about John? 25 A. Correct.</p>



<p style="text-align: right;">Page 146</p> <p>1 Q. John Fuerst?</p> <p>2 A. Correct.</p> <p>3 Q. But you personally reformatted the</p> <p>4 hard drive?</p> <p>5 A. Format C colon, the physical act of</p> <p>6 doing that, yes.</p> <p>7 Q. When did you do that?</p> <p>8 A. I don't remember the exact date,</p> <p>9 but it would have been right when Dr. Ward</p> <p>10 requested us to do it or the administration.</p> <p>11 Q. Okay. And at that time what data</p> <p>12 sets were on the Newegg hard drive?</p> <p>13 A. I don't -- I don't remember if ABCD</p> <p>14 was or not because the focus has always been on</p> <p>15 TCP here, so I would say just TCP, maybe ABCD,</p> <p>16 and I don't think we ever got to Add Health.</p> <p>17 Everything was shut down before they approved.</p> <p>18 Q. So at the time after Dr. Ward</p> <p>19 requested that the data be deleted, you think</p> <p>20 there was TCP data, but you're unsure about the</p> <p>21 ABCD data?</p> <p>22 A. Well, we were reformatting the hard</p> <p>23 drive to wipe out TCP, and I don't remember.</p> <p>24 Q. I don't know how you reformat a</p> <p>25 hard drive without getting rid of everything.</p>	<p style="text-align: right;">Page 148</p> <p>1 done, so he didn't need the data anymore, but</p> <p>2 he had to keep it anyway for reporting</p> <p>3 requirements. He just wanted to pursue</p> <p>4 publishing after data analysis.</p> <p>5 Q. He disagreed with NIH's position</p> <p>6 that the data should be deleted at all?</p> <p>7 A. At that time.</p> <p>8 Q. Okay. And you'll recall that CSU</p> <p>9 suggested sort of as an interim step, well,</p> <p>10 transfer the data to CSU's computer, and then</p> <p>11 if you all are successful in the NIH appeal,</p> <p>12 then you won't have lost it all. Do you</p> <p>13 remember that suggestion?</p> <p>14 A. Yes.</p> <p>15 Q. Why did you not accept that</p> <p>16 suggestion?</p> <p>17 A. I'm not sure I remember. I mean,</p> <p>18 I'd have to think about it. It was a lot of</p> <p>19 data. I suppose I could have maybe took the</p> <p>20 hard drive out and drove it to CSU. I mean, it</p> <p>21 took us ten days to download it, so it was</p> <p>22 massive amounts of data. I don't remember why</p> <p>23 or what my reasoning was at that point. I</p> <p>24 don't think I ever said no. I just didn't</p> <p>25 upload it or didn't send it to CSU.</p>
<p style="text-align: right;">Page 147</p> <p>1 Can you do that?</p> <p>2 A. Yes. But your question was, if I</p> <p>3 understood it correctly, was the ABCD -- was</p> <p>4 the ABCD data on that hard drive.</p> <p>5 Q. Yes, that is my question.</p> <p>6 A. I don't remember.</p> <p>7 Q. Okay. Do you recall that John</p> <p>8 Fuerst objected to the deletion of the data?</p> <p>9 A. I do.</p> <p>10 Q. Do you recall that on May 27th of</p> <p>11 2021 the NIH told both you and CSU that they</p> <p>12 wanted confirmation of the deletion of all of</p> <p>13 the data within 30 days?</p> <p>14 A. I remember that date. That's the</p> <p>15 email I got, the 615-day-late email.</p> <p>16 Q. Yes. But it said delete all the</p> <p>17 data and let us know by June 27th, right?</p> <p>18 A. I don't remember June 27th, but it</p> <p>19 did.</p> <p>20 Q. All right. John Fuerst raised an</p> <p>21 objection saying I'm not done with this and I</p> <p>22 am in the process of publishing and you're</p> <p>23 wrong, NIH, so this data should not be deleted?</p> <p>24 A. I think the better characterization</p> <p>25 of his argument was that data analyses was</p>	<p style="text-align: right;">Page 149</p> <p>1 - - - - -</p> <p>2 (Thereupon, Deposition Exhibit 16,</p> <p>3 an Email String, was marked for</p> <p>4 purposes of identification.)</p> <p>5 - - - - -</p> <p>6 Q. Dr. Pesta, you've been handed</p> <p>7 Exhibit 16, if you want to take a look at it</p> <p>8 just to refresh your recollection, about the</p> <p>9 option to transfer the data and segregate it.</p> <p>10 A. I do remember this, yes.</p> <p>11 Q. Okay. And your email to Dr. Ward</p> <p>12 says you have terabytes of data?</p> <p>13 A. On the hard drive, yes.</p> <p>14 Q. What was the storage capacity of</p> <p>15 it?</p> <p>16 A. I honestly don't remember. I mean,</p> <p>17 it's at home in my basement. I can go look at</p> <p>18 it.</p> <p>19 Q. Who actually bought it, you or</p> <p>20 John?</p> <p>21 A. It was ordered through the mail, so</p> <p>22 it just was delivered to my house.</p> <p>23 Q. Who ordered it?</p> <p>24 A. I don't remember. Probably me.</p> <p>25 Q. That hard drive on the Newegg</p>

<p style="text-align: right;">Page 150</p> <p>1 that's in your basement would still have a 2 record of the date of reformatting; wouldn't 3 it? 4 A. I'm not a tech person to that 5 level. I don't know. 6 Q. Let's go back to Exhibit 5 if you 7 would. 8 A. It will probably be the last one I 9 get to. 10 Q. Are you with me? 11 A. Yes. 12 Q. Okay. Thank you. Flip over to 13 page 40 of the report, please. 14 A. Okay. 15 Q. In this section the committee 16 members are inquiring about John Fuerst and 17 whether he'd be willing to come in and talk to 18 the committee. Do you remember them asking 19 that? 20 A. Yes. 21 Q. And you said at this time that 22 you'd be willing to try to talk to him to get 23 him to come in, and I think one of the things 24 you said at that time was he was in Spain or 25 out of the country on a vacation?</p>	<p style="text-align: right;">Page 152</p> <p>1 handled any confidentiality or anonymity 2 concerns surrounding the data set. So my 3 understanding is that John still has the data 4 set, and it's not clear with whom he is sharing 5 it or what websites the data might be stored 6 on. So he was part of the original team and I 7 understand is no longer affiliated with CSU, 8 but he gained access to the data set under your 9 supervision at CSU. Is that right?" 10 A. Correct. 11 Q. And you said, "Yeah, I agree with 12 you, Conor. I'm responsible for that, but I 13 don't know that he still has the data." You go 14 on to say, "I do know that he wants to publish 15 more studies that do not have my name on them, 16 but you can do that without the data if the 17 analyses are done. The only risk is if a 18 reviewer wants additional analysis, you 19 wouldn't have the data to do that." 20 A. Yeah. That's the rogue comment 21 reference. 22 Q. Because he wanted to keep it in 23 order to be able to respond to reviewers, too, 24 unless somebody needed to do a different 25 analysis?</p>
<p style="text-align: right;">Page 151</p> <p>1 A. Correct. 2 Q. So it might take a little time to 3 get to him, but you agreed that you would try 4 to discuss it, yes? 5 A. Yes. 6 Q. Okay. And then you said at the top 7 at page 41, "Yeah, so I don't want to make it 8 seem like John is the problem and everything is 9 John's fault because I've made mistakes, but 10 he's sort of gone a little bit rogue, and I 11 suspect there is no way he would talk to any 12 CSU people, but I could ask." 13 Why did he not want to talk to CSU 14 people? 15 A. You'd have to ask John that. I 16 don't know. 17 Q. But you thought he wasn't going to? 18 A. Yeah. Well, his personality is 19 such that I suspected that he wouldn't, but it 20 was speculation. 21 Q. Okay. Flip over to page 42. 22 A. Okay. 23 Q. Conor McLennan asks you, "So, 24 Bryan, just following up on that last question 25 which is how have you and your research team</p>	<p style="text-align: right;">Page 153</p> <p>1 A. Correct. 2 Q. You're aware, are you not, that he 3 has never confirmed that he doesn't have the 4 data? 5 A. I talked to him after the fact, I 6 think, and he doesn't have it, but I didn't 7 know that for sure, so I didn't want to say 8 that I'm absolutely betting my job that he 9 doesn't have it. 10 Q. When did you discuss that with him? 11 A. Maybe two years ago. I don't know. 12 It was a while ago, though. 13 Q. What exactly did you ask him? 14 A. I can't quote the verbatim, but do 15 you have the data, I don't know, something like 16 that, the restricted access data. 17 Q. And what did he say? 18 A. I don't remember, but it was a no 19 basically. 20 Q. Can you nail down a year when you 21 had this conversation? Where was it? On the 22 phone? In person? 23 A. We'd occasionally, maybe every four 24 months, go out to lunch just to catch up. I'm 25 pretty sure it would have been one of those</p>

<p style="text-align: right;">Page 154</p> <p>1 occasions.</p> <p>2 Q. And he said no or words to that</p> <p>3 effect?</p> <p>4 A. Correct.</p> <p>5 Q. Does he have derivatives of the</p> <p>6 data?</p> <p>7 A. I don't even know what that is.</p> <p>8 This came up in the committee. Can you define</p> <p>9 what you mean by derivatives?</p> <p>10 Q. No.</p> <p>11 A. Can you ask the question again</p> <p>12 then?</p> <p>13 MR. KELLY: Object to the question,</p> <p>14 ambiguous.</p> <p>15 Q. Does -- what are R Notebooks?</p> <p>16 A. So they are statistical packages,</p> <p>17 software programs, that will do your</p> <p>18 statistical analyses, and R is the one we used</p> <p>19 for TCP.</p> <p>20 Q. Do R Notebooks contain derivative</p> <p>21 data from the underlying data set?</p> <p>22 A. No. They're more -- it's almost</p> <p>23 like computer programming. They are code on</p> <p>24 how you should run the analyses, what tests you</p> <p>25 want to conduct, and stuff like that.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. How do you know that he did not?</p> <p>2 A. I saw no evidence of it, and he</p> <p>3 told me no when I asked him whenever that day</p> <p>4 was.</p> <p>5 Q. So you asked him two questions?</p> <p>6 A. I don't remember. There was a</p> <p>7 conversation where I asked, not verbatim, did</p> <p>8 you ever have a copy of the data, and he said</p> <p>9 no. I didn't qualify it all data, phenotypic</p> <p>10 data, genotypic data.</p> <p>11 Q. All right. So do you recall that</p> <p>12 in the committee interview you were asked this</p> <p>13 question about whether John still had the data,</p> <p>14 and you said not that I know of? Do you recall</p> <p>15 that?</p> <p>16 A. Not that I know of. I think that's</p> <p>17 verbatim, yeah.</p> <p>18 Q. And then subsequently you were</p> <p>19 asked how he would have had access to the data,</p> <p>20 and your answer was something, and we can go,</p> <p>21 we'll look for it if you want to, but something</p> <p>22 on the order of I supervised him, and I don't</p> <p>23 think he took the data unless he stole it. Do</p> <p>24 you remember that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 155</p> <p>1 Q. So they aren't the tests</p> <p>2 themselves. They are just how do you do the</p> <p>3 tests?</p> <p>4 A. Yeah. It's the software that runs</p> <p>5 the tests.</p> <p>6 Q. Okay. So do you believe that the</p> <p>7 only data that had to be deleted was the</p> <p>8 original data received from NIH?</p> <p>9 A. The TCP data you mean?</p> <p>10 Q. Correct.</p> <p>11 A. Everything related to it, even the</p> <p>12 phenotypic stuff, my understanding was you had</p> <p>13 to delete everything. I think the NIH decision</p> <p>14 is where you can keep something for a</p> <p>15 conference presentation, but we didn't -- that</p> <p>16 didn't apply.</p> <p>17 Q. So when you said that John deleted</p> <p>18 the data, or that's the question that you asked</p> <p>19 him, did it include everything?</p> <p>20 A. It's all or nothing. I mean, that</p> <p>21 presumes that John had his own copy which I</p> <p>22 don't think he did.</p> <p>23 Q. I'm sorry?</p> <p>24 A. I think your question presumes that</p> <p>25 he had his own copy, but he did not.</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. And then later on -- and now look</p> <p>2 at page 98, please. This is the second</p> <p>3 interview.</p> <p>4 A. Okay.</p> <p>5 Q. They recall that, those earlier</p> <p>6 questions from the first interview, and they</p> <p>7 are really asking the question why was the</p> <p>8 answer not that I'm aware of instead of, no, he</p> <p>9 didn't have the data, and you said, "Well, if</p> <p>10 he has it, I don't know of it. If he's</p> <p>11 bluffing that he has it, but I think he's</p> <p>12 bluffing." And then Mallett asks, "Why would</p> <p>13 John be bluffing, any idea?" And you said,</p> <p>14 "Well, I think his life's mission is to get</p> <p>15 this research published."</p> <p>16 What did you mean by that?</p> <p>17 A. Not Lasker, et al., specifically,</p> <p>18 but he wants to answer the question why are</p> <p>19 there IQ gaps across races.</p> <p>20 Q. Pardon me?</p> <p>21 A. His mission I guess is to research</p> <p>22 and answer the question why are there race</p> <p>23 differences on IQ tests.</p> <p>24 Q. And that is so important to him</p> <p>25 that he might have stolen the data?</p>

<p style="text-align: right;">Page 158</p> <p>1 A. So this was a stressful situation.  2 I didn't -- I couldn't say 100 percent sure  3 that he didn't have it, so I -- that's what I  4 said.  5 Q. Okay. And this conversation that  6 happened sometime in the last two years, and we  7 don't know when, but it might have happened at  8 a lunch with him, and so you asked him if he  9 deleted the data, and he said yes?  10 A. I asked -- no, I don't think I  11 asked that. I asked him if he had the data or  12 ever had the data unauthorized, yeah.  13 Q. Okay. All right. Did you ask him  14 how come he wouldn't confirm that information  15 as requested by CSU?  16 A. No.  17 Q. Why not?  18 A. I think John had the right to  19 appeal, and I thought the NIH would reply.  20 They didn't give him one. He appealed to two  21 other NIH committees. They didn't reply. So  22 until that happened -- can you repeat the  23 question?  24 Q. Sure. Did you ask John at  25 this -- when you asked him have you ever had</p>	<p style="text-align: right;">Page 160</p> <p>1 A. So I'm just verifying I was fired  2 March 4th of '21?  3 MR. KELLY: '22.  4 Q. '22.  5 A. I'm sorry. I don't know. I  6 suspect after, but I'm just --  7 Q. Okay. Did you reengage with John  8 Fuerst after you were terminated?  9 A. Yes, to collaborate on unrelated  10 research. He might have reached out to me. I  11 don't know which way it went.  12 Q. How did you meet John?  13 A. Initially you mean?  14 Q. Yes.  15 A. Physically meet him or meet him on  16 the internet?  17 Q. Either.  18 A. So we publish in the same area.  19 Around I want to say 2016 we published like a  20 point-counterpoint piece where John and Emil  21 published a paper arguing that and I tried to  22 rebut it.  23 Q. What was the paper?  24 A. Could I see my vita?  25 Q. Sure.</p>
<p style="text-align: right;">Page 159</p> <p>1 the data or whatever the phrasing of the  2 question was, did you ask him, well, why don't  3 you just tell that to CSU and to NIH?  4 A. No.  5 Q. Why not?  6 A. I think he did tell it to NIH.  7 Well, I don't know. I mean, I just didn't ask.  8 I mean, he refused to be interviewed so.  9 Q. During the interview with the  10 committee, you indicated to the committee that  11 you had distanced yourself both professionally  12 and personally from John Fuerst. Do you recall  13 that?  14 A. At that time that was true, but  15 I've since reengaged.  16 Q. After the termination?  17 A. Yes. I can't be fired again.  18 Q. Two years ago you wouldn't have  19 been fired.  20 A. March 4th, 2021, right?  21 Q. Yes.  22 A. So can you repeat the question?  23 Q. Did you have this lunch or wherever  24 it was that you talked to John about the data,  25 was that before or after you were fired?</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Oh, Does Race Differences  2 Cause -- Does IQ Cause Race Differences in  3 Well-Being. That would be number 15 published  4 in 2016.  5 Q. So you would have been -- did you  6 meet him in person during that time or just on  7 line?  8 A. No. I don't even know if I had a  9 lot of direct contact with him, but we were  10 invited to publish his piece attacking my  11 research and then my rebuttal.  12 Q. In what publication was that?  13 A. I think Mankind Quarterly, yes.  14 Q. I'm sorry?  15 A. The journal is called Mankind  16 Quarterly.  17 Q. And that was run by Richard Lynn,  18 right?  19 A. Phil Rushton and then Richard Lynn,  20 correct.  21 Q. You're aware that Fuerst was a  22 student at CSU for some period of time, right?  23 A. Yeah. I thought he graduated, but  24 I know he had like 130 credits, so I just  25 assumed he was graduated. I didn't scroll to</p>

<p style="text-align: right;">Page 162</p> <p>1 the bottom to see degree conferral. So it's my 2 understanding he had enough credits to graduate 3 but never did. 4 Q. While he was an undergraduate at 5 CSU, did you have him in any of your courses? 6 A. I didn't even know him back then. 7 Q. What do you understand about John 8 Fuerst's educational attainment? 9 A. I don't think he has a degree 10 since -- I incorrectly told the provost I 11 believe that he graduated CSU, but that was a 12 mistake in reading his transcript. 13 Q. Does he have a degree from 14 anywhere? 15 A. I don't -- he might. I don't know. 16 It would only be an undergrad. 17 Q. A baccalaureate? 18 A. Yes. 19 Q. What are other institutions of 20 higher education with which he has been 21 associated to your knowledge? 22 A. John? 23 Q. Yes? 24 A. I don't know. 25 Q. NC State?</p>	<p style="text-align: right;">Page 164</p> <p>1 A. I think you could argue that he is. 2 I mean, I think he passed the Daubert test with 3 his vita. 4 Q. Meaning the Daubert test for expert 5 testimony? 6 A. Yes. 7 Q. Based on what? 8 A. I mean, you have to get these 9 things approved. If you're not a good 10 researcher, you're going to get rejected. He's 11 got a pretty good vita, CV. 12 Q. Yes. Where did you acquire his CV? 13 A. Google Scholar has them all. I 14 mean, you can just search anyone's name. 15 Q. Google Scholar is primarily 16 prepared by the subject, meaning the scholar? 17 A. No. I mean, I have papers on 18 memory and cognition which is not differential 19 psychology, but if you go to my page, it will 20 show all my publications. It's not broken down 21 by a discipline. 22 Q. What led you to conclude that 23 either Emil or John had the requisite expertise 24 to be a coauthor on the Lasker paper? 25 A. It got approved. It got accepted.</p>
<p style="text-align: right;">Page 163</p> <p>1 A. Somewhere in North Carolina sounds 2 familiar, but I don't know if that was the 3 specific school, nor do I know if he 4 registered. 5 Q. I'm sorry? 6 A. I don't know if he registered. 7 Q. I see. What is his field of 8 expertise? 9 A. Both him and Emil are self-taught, 10 it's my expertise, too, in differential 11 psychology and statistics. 12 Q. What is a biometrician? 13 A. I think he wanted to get a Ph.D. in 14 that. Maybe that was North Carolina. It's 15 just high level computing to analyze data to my 16 understanding. 17 Q. Do you know whether he has done any 18 coursework in that? 19 A. I don't know. 20 Q. And what is differential 21 psychology? 22 A. So it's the study of why people 23 differ; some are tall, some are short, some are 24 smart, some are not. 25 Q. He isn't a geneticist; agreed?</p>	<p style="text-align: right;">Page 165</p> <p>1 I'm sorry, I misunderstood your question. My 2 interactions with them. 3 Q. How often have you published papers 4 with coauthors who are not degreed? 5 A. Can I take a quick scan? 6 Q. Sure. 7 A. Well, not counting Emil or Fuerst? 8 Q. Yes. 9 A. And Lasker is a Ph.D. student. I 10 don't know what degrees he has. 11 Q. We're going to talk about him in a 12 second. 13 A. Probably none, but just let me 14 double-check. No. 16, I don't think Omasta, 15 that's O-M-A-S-T-A, had a degree, and that 16 would be it. 17 Q. And that's your personal 18 experience. How about more broadly, other 19 scholars besides yourself, how usual is it? 20 A. I never thought about it. I think 21 what matters is you produce a quality 22 manuscript that survives peer review. It 23 doesn't matter if you're someone in the street. 24 If the science is good, that proves your 25 qualifications, and by good I mean survives</p>



<p style="text-align: right;">Page 166</p> <p>1 peer review.</p> <p>2 Q. What do you know about Jordan</p> <p>3 Lasker, I keep calling him John, Jordan Lasker?</p> <p>4 A. Jordan I had never heard of. The</p> <p>5 problem is it's a really complicated</p> <p>6 statistical technique, and neither John nor I</p> <p>7 knew how to do it, so we brought him on aboard.</p> <p>8 Q. Who did know of him if neither you</p> <p>9 nor John knew of him?</p> <p>10 A. We -- what we didn't know is how to</p> <p>11 do the statistics. I didn't know Jordan, but I</p> <p>12 guess John did.</p> <p>13 Q. Was it John who invited Jordan to</p> <p>14 be a coauthor?</p> <p>15 A. I don't know. It wasn't me.</p> <p>16 Q. Who invited Emil to be a coauthor?</p> <p>17 A. I think he was involved from the</p> <p>18 beginning, but he's -- he didn't have access to</p> <p>19 the genetic data, so I don't think he appears</p> <p>20 on these applications.</p> <p>21 Q. Yes, I'm aware of that, but that</p> <p>22 wasn't my question. Who invited Emil to be</p> <p>23 part of the project?</p> <p>24 A. It probably was just John and I,</p> <p>25 one of us or maybe both of us.</p>	<p style="text-align: right;">Page 168</p> <p>1 educational degrees.</p> <p>2 Q. Why would you not care whether</p> <p>3 the --</p> <p>4 A. I care, but you recognize their</p> <p>5 names. I mean, they are people who publish in</p> <p>6 the field. That makes them experts to do the</p> <p>7 peer review.</p> <p>8 Q. And you mentioned before that it</p> <p>9 would have been the action editors who would</p> <p>10 have been making the review assignments?</p> <p>11 A. Yeah. I don't think I ever did.</p> <p>12 Q. Pardon me?</p> <p>13 A. I'm not sure I ever did do that.</p> <p>14 But, yeah, the action editors, but I'm going on</p> <p>15 my memory.</p> <p>16 Q. I think your testimony was you</p> <p>17 would have had to approve it, you would have</p> <p>18 rubber stamped it, but it would have been the</p> <p>19 action editors who decided.</p> <p>20 A. I would have approved the final</p> <p>21 decision as recommended by the action editors.</p> <p>22 Q. But you wouldn't have independently</p> <p>23 gone and redone the work of the action editors</p> <p>24 to determine who was best. You would have</p> <p>25 relied upon them for those decisions. Is that</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Did you know Emil before?</p> <p>2 A. I had never met him, but through</p> <p>3 interactions on the internet, yes.</p> <p>4 Q. Where on the internet?</p> <p>5 A. Well, it would be our publications</p> <p>6 and that point-counterpoint, number 15.</p> <p>7 Q. Oh, he was on that as well?</p> <p>8 A. Correct.</p> <p>9 Q. Not just John?</p> <p>10 A. I'll -- yes, I think it was Fuerst</p> <p>11 and Kirkegaard one paper, and my rebuttal the</p> <p>12 second paper.</p> <p>13 Q. Do you know whether the people who</p> <p>14 peer reviewed your papers at Psych were</p> <p>15 degreed?</p> <p>16 A. Yeah. It's hard -- I mean, you can</p> <p>17 publish without a degree, and it just depends</p> <p>18 on the quality of the science, but I don't</p> <p>19 think an editor would let you peer review</p> <p>20 without that, but that's speculation.</p> <p>21 Q. Did you ever permit that when you</p> <p>22 were the editor at Psych?</p> <p>23 A. Not -- I don't know. I mean, it's</p> <p>24 not that I had the CVs of the reviewers; you</p> <p>25 know what I mean? I didn't verify their</p>	<p style="text-align: right;">Page 169</p> <p>1 what you're saying?</p> <p>2 A. My philosophy was don't trump the</p> <p>3 action editors unless you have a good reason,</p> <p>4 and there was no good reason for any paper that</p> <p>5 was published in Psych that I was the editor in</p> <p>6 chief at.</p> <p>7 Q. Okay. Do you know the names of</p> <p>8 anybody at MD --</p> <p>9 A. MDPI?</p> <p>10 Q. Yes, who have control over Psych.</p> <p>11 A. I know there is a new editor. I</p> <p>12 don't even know who he is. So I don't know,</p> <p>13 no.</p> <p>14 Q. What do you understand is the</p> <p>15 function of IRB?</p> <p>16 A. To make sure that your research</p> <p>17 participants will be safe.</p> <p>18 Q. Human subjects?</p> <p>19 A. Human subjects, yes. I think even</p> <p>20 for animals, too. They will be safe. They</p> <p>21 have privacy. They won't have any violations</p> <p>22 like privacy, et cetera.</p> <p>23 Q. Okay. And I believe it's your</p> <p>24 contention that none of the studies that you</p> <p>25 were interested in --</p>

<p style="text-align: right;">Page 170</p> <p>1 A. TCP.</p> <p>2 Q. -- relating to TCP required that it</p> <p>3 go through the IRB approval process; is that</p> <p>4 right?</p> <p>5 A. That's what it says right on the</p> <p>6 NIH website.</p> <p>7 Q. Did you consider that, even if the</p> <p>8 NIH did not require going through the IRB</p> <p>9 process, CSU's policy would have required that?</p> <p>10 MR. KELLY: Object to the form of</p> <p>11 the question, assumes facts not in evidence.</p> <p>12 A. Could you repeat that? I'm sorry.</p> <p>13 Q. Do you know whether independent of</p> <p>14 NIH's requirements for IRB approval, do you</p> <p>15 know whether CSU's IRB approval process</p> <p>16 required you to go to IRB to either get</p> <p>17 approval or an exemption?</p> <p>18 A. See, it's NIH's data. Suppose CSU</p> <p>19 says approve it, but NIH doesn't want to</p> <p>20 approve it? I'm not getting it. So the</p> <p>21 ultimate authority, the only authority, the</p> <p>22 only decider is NIH.</p> <p>23 Q. So CSU's research policies don't</p> <p>24 matter if it's NIH data?</p> <p>25 A. TCP data. It says it doesn't need</p>	<p style="text-align: right;">Page 172</p> <p>1 You may answer, Bryan.</p> <p>2 A. I have two answers that I think</p> <p>3 both address your question. The first is just</p> <p>4 logical. I didn't know this was going to blow</p> <p>5 up on me in 2019, it was like a year and a half</p> <p>6 after we accessed the data, and it was an</p> <p>7 oversight to not report to NIH that I was</p> <p>8 uploading to the external server.</p> <p>9 So I would have had to be psychic,</p> <p>10 I think, that back in 2018 that someone was</p> <p>11 going to say two years later I needed an IRB</p> <p>12 approval when they don't even have -- that's</p> <p>13 it, yeah.</p> <p>14 Q. Do you dispute the following</p> <p>15 statement, CSU policy requires that anytime you</p> <p>16 are doing research involving human subjects</p> <p>17 that you must either get from CSU's IRB an</p> <p>18 exemption or an approval?</p> <p>19 MR. KELLY: Object to the form of</p> <p>20 the question, ambiguous, and I believe it also</p> <p>21 assumes facts not in evidence. You may answer,</p> <p>22 Bryan.</p> <p>23 THE WITNESS: I'm sorry to do this</p> <p>24 to you, but can you repeat it?</p> <p>25 (Record read.)</p>
<p style="text-align: right;">Page 171</p> <p>1 it. I didn't get it because it said it didn't</p> <p>2 need it.</p> <p>3 Q. So if NIH's policy requires a</p> <p>4 specific threshold of protection for the</p> <p>5 subjects, and we'll just call it threshold A,</p> <p>6 but CSU says, okay, but we want threshold B so</p> <p>7 we're going to provide more protection, why</p> <p>8 would that mean that you wouldn't have to</p> <p>9 comply with CSU's --</p> <p>10 A. The data --</p> <p>11 MR. KELLY: Object to the form of</p> <p>12 the question.</p> <p>13 Q. Hold on.</p> <p>14 A. I'm sorry.</p> <p>15 Q. Let me finish and let him have his</p> <p>16 objection, and then you can answer.</p> <p>17 MR. KELLY: Thank you, Ms. Giffen.</p> <p>18 Q. So let's start over again. If</p> <p>19 NIH's policy to protect the subjects is at</p> <p>20 level A, but CSU wants to employ a higher level</p> <p>21 of protection for the research that comes out</p> <p>22 of its institution, why would you not comply</p> <p>23 with CSU's requirements?</p> <p>24 MR. KELLY: Object to the form of</p> <p>25 the question, assumes facts not in evidence.</p>	<p style="text-align: right;">Page 173</p> <p>1 MR. KELLY: Same objection.</p> <p>2 A. These are archival data. I never</p> <p>3 met the participants of the study that was</p> <p>4 collected in --</p> <p>5 Q. Wait. You're answering a different</p> <p>6 question than I just asked.</p> <p>7 A. No. I do not agree for TCP data</p> <p>8 specifically.</p> <p>9 Q. You believe that because why?</p> <p>10 A. I think there is like four good</p> <p>11 arguments.</p> <p>12 Q. Give them all to me.</p> <p>13 A. The first, they are archival data.</p> <p>14 I came in contact with no human. So the</p> <p>15 concern is it's really sensitive data, and</p> <p>16 theoretically if somebody got it, they could</p> <p>17 say that line number three of the spreadsheet</p> <p>18 is Jane Doe, so that needs to be protected.</p> <p>19 That's all through the NIH. There is nothing</p> <p>20 CSU could have added that was needed given what</p> <p>21 NIH -- you know, the application process for</p> <p>22 NIH.</p> <p>23 Q. I don't think you listed four</p> <p>24 things, and you said there are four arguments.</p> <p>25 A. How many did I list?</p>

<p style="text-align: right;">Page 174</p> <p>1 Q. I feel unsure because you could 2 have put it all together. 3 MS. KAMINSKI: I think there was 4 two; no human contact and nothing CSU could 5 add. 6 A. Archival data. CSU is irrelevant 7 because it's the NIH's data. It doesn't matter 8 what CSU says. If NIH doesn't want to give it 9 to me, they are not. If NIH does want to give 10 it to me, they will. Now, of course it has to 11 go through CSU on these initial applications, 12 but they approved I think everything I did. 13 Q. So let's just -- let's take a for 14 instance then with what you just said. 15 A. Sure. 16 Q. If NIH said, yes, you can have the 17 data, and we don't think you need to run it by 18 your institution's IRB approval. 19 A. It's not a thing. That's what it 20 says on the website. 21 Q. CSU says, yeah, we don't agree. At 22 this institution that is not enough. You have 23 to either get an IRB approval or an exemption, 24 and you don't get to decide between those two, 25 only IRB does.</p>	<p style="text-align: right;">Page 176</p> <p>1 A. I did get it for a later data set. 2 Q. That's right. So the option here 3 with all of the TCP data was to go to the IRB 4 and then you could point out that NIH doesn't 5 require IRB approval and ask for an exemption? 6 A. Why would I go to CSU's IRB when 7 clearly, and I think everybody admits it, NIH 8 says it's not needed? 9 Q. Isn't that, Dr. Pesta, just saying 10 CSU doesn't matter? 11 MR. KELLY: Object to the form of 12 the question. 13 A. I don't think so because they have 14 to approve my initial application. They could 15 have pointed it out then. They didn't. Go 16 ahead. 17 Q. Do you agree with this statement or 18 disagree with this statement, the policy of CSU 19 is that only IRB gets to decide that research 20 involving human subjects requires IRB approval 21 or is exempt? 22 MR. KELLY: Object to the form of 23 the question. 24 A. Not for TCP. It's irrelevant. 25 It's like they are out of jurisdiction for TCP</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Yeah, but the problem is they made 2 that determination two years after I got -- I 3 applied for the data. How could you go back in 4 time and apply for IRB? 5 Q. That begs the question of shouldn't 6 you have found out in the first place? 7 A. No. I mean, I complied with 8 everything that NIH wanted me to do, and it 9 clearly says, and I don't know how many times I 10 have to say it, and it's even in the -- the 11 committee even included it in the report. 12 There is a table that says is IRB needed, no, 13 so why would I go through CSU's IRB? 14 I did for a later data set, ABCD, 15 because it said it's needed. 16 Q. Meaning NIH said it's needed? 17 A. Yes. 18 Q. Did you get an exemption, by the 19 way? 20 A. I did for either it was Add Health 21 or ABCD. I don't remember. 22 Q. So actually going through CSU IRB 23 doesn't mean you have to go through the 24 rigamarole of the approval process because you 25 can get an exemption, right? That's an option?</p>	<p style="text-align: right;">Page 177</p> <p>1 data, archival data collected like 12 years 2 ago. I had no contact with the human subjects. 3 I did have their a DNA. That's it. 4 Q. Wouldn't a careful researcher who 5 was using human subject data have just gone to 6 IRB and said I think we're exempt, but I'm 7 doing -- I'm crossing my Ts and dotting my Is? 8 MR. KELLY: Object to the form of 9 the question, assumes facts not in evidence and 10 is ambiguous as well. You can answer, Bryan. 11 A. No. I mean, NIH says you don't 12 need it. Why would I go through it? 13 Q. It doesn't matter if CSU's policy 14 says otherwise? 15 A. I'm not saying that. I think NIH 16 realizes that it's archival data. You're not 17 interacting in real life with these people. 18 That is their only interest is in preserving 19 the anonymity of the participants. So what 20 could I have said to CSU in 2018? I don't 21 know. 22 Q. Isn't part of what you do is call 23 into question whether the data would remain 24 anonymous? 25 A. According to CSU. I strongly</p>

<p style="text-align: right;">Page 178</p> <p>1 disagree with that.</p> <p>2 Q. Why do you disagree with that?</p> <p>3 A. Because it's all BS. I didn't do</p> <p>4 these things they are charging me with -- they</p> <p>5 charged me with.</p> <p>6 Q. You didn't upload the data to a</p> <p>7 Dutch website?</p> <p>8 A. Yeah, the one exception is that,</p> <p>9 and I've admitted that throughout this whole</p> <p>10 investigation.</p> <p>11 Q. And, as you described earlier when</p> <p>12 you described what that website did, added</p> <p>13 information that wasn't originally in the TCP</p> <p>14 data with respect to the participants?</p> <p>15 MR. KELLY: Object to the form of</p> <p>16 the question, assumes facts not in evidence,</p> <p>17 ambiguous.</p> <p>18 Q. You can answer the question.</p> <p>19 A. Yeah, it was an oversight. That</p> <p>20 could be like number three if we're keeping</p> <p>21 track still. It just did not occur to me that</p> <p>22 I should have gotten prior approval as it's</p> <p>23 called from NIH to upload to an external</p> <p>24 server.</p> <p>25 Q. Let's talk about that. That is you</p>	<p style="text-align: right;">Page 180</p> <p>1 A. I think it's the NIH's data. If</p> <p>2 they say IRB is not needed, it's not needed.</p> <p>3 Q. We're actually talking about the</p> <p>4 upload of the data to the website right now.</p> <p>5 A. Well, I mean, it was an oversight.</p> <p>6 If I was wise enough or whatever the word is in</p> <p>7 2018 to realize that that should be reported,</p> <p>8 then maybe I'd agree with that, but I wouldn't</p> <p>9 have reported it to CSU. I would have reported</p> <p>10 it to the NIH.</p> <p>11 Can I follow-up real quick?</p> <p>12 Q. Sure.</p> <p>13 A. Even Kent Taylor retracted his</p> <p>14 initial complaint that I needed the IRB because</p> <p>15 he actually then looked at it and saw that I</p> <p>16 didn't, so he retracted it. It's got to be in</p> <p>17 Exhibit 5.</p> <p>18 Q. Where does Kent Taylor work?</p> <p>19 A. UCLA.</p> <p>20 Q. Would he know anything about the</p> <p>21 CSU IRB approval process or when it's required</p> <p>22 to submit to CSU IRB?</p> <p>23 MR. KELLY: Object to the form of</p> <p>24 the question.</p> <p>25 A. So he starts out with a negative</p>
<p style="text-align: right;">Page 179</p> <p>1 pretty consistently conceded that that should</p> <p>2 have been disclosed to NIH, that you were going</p> <p>3 to upload that data and what you were going to</p> <p>4 do with it, right?</p> <p>5 A. Yes. It was an oversight.</p> <p>6 Q. So why wasn't that research</p> <p>7 misconduct?</p> <p>8 A. It was a mistake, I mean, unless</p> <p>9 you think there was some devious purpose behind</p> <p>10 it. But I don't see what advantage I would</p> <p>11 have got by hiding it from NIH that I was</p> <p>12 estimating skin color. It just did not occur</p> <p>13 to me that we had to do that until after it was</p> <p>14 pointed out two years later at which time I</p> <p>15 couldn't go back and regret -- to 2018 and get</p> <p>16 IRB approval.</p> <p>17 The only thing that matters then</p> <p>18 was I was sincerely sorry for that and I am</p> <p>19 still, but the question is did it cause any</p> <p>20 harm, and it did not.</p> <p>21 Q. So is that the standard we should</p> <p>22 use is whether the misconduct caused harm?</p> <p>23 A. I think --</p> <p>24 MR. KELLY: Object to the form of</p> <p>25 the question, assumes misconduct.</p>	<p style="text-align: right;">Page 181</p> <p>1 attack focused on not getting IRB.</p> <p>2 Q. My question is, do you know whether</p> <p>3 Kent Taylor knows anything about CSU's IRB</p> <p>4 approval process? Not NIH's, CSU's.</p> <p>5 A. They are reasonably standardized</p> <p>6 across universities, so I don't know how to</p> <p>7 answer that.</p> <p>8 Q. So you don't know whether he knows</p> <p>9 or he doesn't know; is that the answer?</p> <p>10 MR. KELLY: Object to the form of</p> <p>11 the question, mischaracterizes the testimony.</p> <p>12 A. I don't know for sure, yeah.</p> <p>13 Q. Okay. What trainings were you</p> <p>14 involved in at CSU to engage in research?</p> <p>15 A. In general research?</p> <p>16 Q. Yes.</p> <p>17 A. I mean, I was educated there for</p> <p>18 three degrees.</p> <p>19 Q. Did you have any specific education</p> <p>20 about research policy or research ethics?</p> <p>21 A. Yeah, I was even on the IRB</p> <p>22 committee at the university level 15 years ago.</p> <p>23 Q. Okay. Any specific training</p> <p>24 courses?</p> <p>25 A. Yeah, so you have to take a</p>

<p style="text-align: right;">Page 182</p> <p>1 research methods and design course undergrad, 2 master's, and Ph.D., and it would be a chapter 3 in that course. 4 Q. Do you recall what the name of the 5 text was that was used in the courses that you 6 took? 7 A. For the graduate classes it was 8 probably more journal articles. I have no idea 9 what the book was in 1988 or whenever I took 10 it. 11 Q. I understand that you have an 12 objection that you were not permitted to 13 cross-examine the complainants during the 14 committee investigation process; is that right? 15 A. The external like Bird and Taylor, 16 correct? 17 Q. Yes. Is that right? 18 A. Correct. 19 Q. What makes you think you have a 20 right to cross-examine? 21 A. It's there in the policy. I mean, 22 we can pull it up. I don't have the specific 23 number memorized. But it says -- I don't think 24 it uses the word cross-examine, but it says 25 something like, paraphrasing, the defendant has</p>	<p style="text-align: right;">Page 184</p> <p>1 A. It's 34. I wonder if the policy is 2 in here. We could pull it up. 3 Q. Okay. Well, we're going to have to 4 wait to do that because it's not easily 5 available. 6 A. Okay. 7 Q. It's the Ohio Administrative Code 8 sections that include breaking research policy? 9 A. Well, I don't know if the ORC is 10 incorporated into CSU's policy, but it's on 11 there. If you go to mycsuohio.edu and type in 12 academic research misconduct, the first thing 13 that comes up is a long policy on how it all 14 works. 15 Q. I want to be clear, I didn't say 16 the Ohio Revised Code, the Ohio Administrative 17 Code. 18 A. Okay. I didn't catch that. 19 MR. KELLY: Object to the form. I 20 don't think the witness knows what you're 21 referring to. 22 MS. GIFFEN: Okay. 23 MS. KAMINSKI: I think so. 24 Q. All right. After the report comes 25 out, right?</p>
<p style="text-align: right;">Page 183</p> <p>1 the right to write out questions to be 2 submitted to these witnesses and to get their 3 replies. 4 Q. Did you do that? 5 A. I didn't know they were being 6 interviewed until I got the transcripts of 7 their interview. 8 Q. Right. Did you do that afterwards? 9 A. I sent a rebuttal to CSU. 10 Q. You know that the committee 11 received that rebuttal, right? 12 A. It's in the final report. 13 Q. So you were permitted to provide 14 your questions, concerns, statements of 15 disagreement with anything the complainants 16 said during their interviews, right? 17 MR. KELLY: Object to the form. 18 A. That's not the policy, though. 19 MR. KELLY: Objection. 20 Q. What is the policy? 21 A. The policy was that I was allowed 22 to write out questions before the interview to 23 have it submitted to like Bird and Taylor and 24 then get replies from them. 25 Q. What policy are you referring to?</p>	<p style="text-align: right;">Page 185</p> <p>1 A. The committee's report? 2 Q. Yes. 3 A. Yes. 4 Q. On -- 5 A. Do you I mind? I want to take my 6 tie off. 7 - - - - - 8 (Thereupon, Deposition Exhibit 17, a 9 Document Entitled Interview 10 (10/11/21) Supplement, Bryan Pesta, 11 was marked for purposes of 12 identification.) 13 - - - - - 14 Q. Handing you what's been marked as 15 Exhibit 17, Dr. Pesta, can you confirm to me 16 this is one of the documents that you provided 17 to the committee, and it's specifically a 18 supplement that you provided after your 19 October 11th interview, right? 20 A. Was that the first or second 21 interview? 22 Q. That was the second interview. 23 A. Correct. 24 Q. Okay. 25 - - - - -</p>



<p style="text-align: right;">Page 186</p> <p>1 (Thereupon, Deposition Exhibit 18, 2 an Email From Bryan J. Pesta Dated 3 1/15/22, was marked for purposes of 4 identification.) 5 - - - - - 6 Q. I should say before we go to this 7 next one, you were provided a draft copy of the 8 final report in December of 2021, correct? 9 A. I don't remember the exact date, 10 but it sounds like December is correct. 11 Q. And you on December 2nd provided a 12 rebuttal to that report, correct? 13 A. I'm sure I did. 14 Q. Okay. And then the committee on 15 January 13th issues its final report which is 16 Exhibit 5? 17 A. Is it Exhibit 5? 18 Q. Yes. 19 A. Okay. 20 Q. I mean, you can check. You don't 21 have to take my word for it. 22 A. You're talking about the ad hoc 23 committee? 24 Q. No, no, the final investigative 25 committee report.</p>	<p style="text-align: right;">Page 188</p> <p>1 colleagues, right? 2 A. Yes. 3 Q. And when you say colleagues, who 4 got this? 5 A. Well, I don't know. It's a -- it 6 doesn't show. We're on 18, right? 7 Q. Yes. 8 A. It doesn't show. You see the -- 9 Q. I know. That's why I'm asking you, 10 because I don't know. 11 A. Probably a lot of people in 12 management that I am more collegial with. I'm 13 pretty sure I copied the department chair who 14 at that time was Timothy DeGroot. He might 15 still be there as department chair. I don't 16 know. 17 Q. Anybody else that you know? 18 A. I'm sure I sent it to people 19 outside of CSU, too. No, I don't know. I 20 don't know. 21 Q. Okay. All right. Do you have 22 something that would show to whom you sent it? 23 A. You guys should because this was 24 sent through CSU email. 25 Q. You're looking at what we have.</p>
<p style="text-align: right;">Page 187</p> <p>1 A. This big document? 2 Q. Correct. 3 A. And what date did you say that was? 4 Q. I said January 13th, 2022. 5 A. That sounds correct. I thought you 6 were talking about the ad hoc committee. 7 Q. So after the committee issued its 8 report, you received -- 9 MS. GIFFEN: I need to pull out the 10 provost letter of January 13th. I'm glad 11 you're here (indicating). 12 - - - - - 13 (Thereupon, Deposition Exhibit 19, a 14 Letter from the Office of the 15 Provost Dated 1/13/22, was marked 16 for purposes of identification.) 17 - - - - - 18 Q. Dr. Pesta, is that a copy of the 19 letter from Provost -- then Provost Bloomberg 20 of January 13th indicating her acceptance of 21 the final report and her intention to terminate 22 you? 23 A. Correct. 24 Q. And then if you will refer now to 25 Exhibit 18, you then sent a letter to your</p>	<p style="text-align: right;">Page 189</p> <p>1 A. I mean, I don't have a record. 2 This is all I've got. 3 Q. That's all right. That's the 4 answer. All right. So you are aware that 5 following the provost's letter of January 13th 6 that an ad hoc committee was convened pursuant 7 to the collective bargaining agreement? 8 A. Correct. 9 Q. And do you remember who the people 10 were who were on the committee? 11 A. No, because they had their backs 12 turned to me. They wouldn't even talk to me or 13 address any of my questions. I don't remember. 14 Q. They had their backs turned to you? 15 A. They were sitting at a table. I 16 was on Zoom. Everybody else was present at 17 some room in CSU. I felt like I was almost 18 completely ignored. They did ask me some 19 questions, but, yes, I don't remember who they 20 were right now. 21 Q. They were informed that the ad hoc 22 committee was going to be convened, and you 23 were given an opportunity to present a rebuttal 24 to the provost's letter, right? 25 A. Yes.</p>

<p style="text-align: right;">Page 190</p> <p>1       - - - - -</p> <p>2       (Thereupon, Deposition Exhibit 20,</p> <p>3       an Email From Bryan Pesta Dated</p> <p>4       1/25/22 with Attachment, was marked</p> <p>5       for purposes of identification.)</p> <p>6       - - - - -</p> <p>7       Q.   Handing you what's been marked as</p> <p>8       Exhibit 20, Dr. Pesta, is that your rebuttal</p> <p>9       that went to the ad hoc committee?</p> <p>10      A.   It's definitely my rebuttal. Let</p> <p>11      me read the first thing. Yeah, this is --</p> <p>12      Q.   If you need time to read it, you</p> <p>13      can take it.</p> <p>14      A.   I got it. This is it.</p> <p>15      Q.   Okay.</p> <p>16      - - - - -</p> <p>17      (Thereupon, Deposition Exhibit 21,</p> <p>18      an Email From Bryan Pesta Dated</p> <p>19      1/28/22 with Attachment, was marked</p> <p>20      for purposes of identification.)</p> <p>21      - - - - -</p> <p>22      Q.   If we look back at Exhibit 20 just</p> <p>23      for a second, so this is addressed to Michael</p> <p>24      Artbauer, Elizabeth Lehfeltdt, Eric Allard,</p> <p>25      Debbie Jackson, Stephanie Kent, Andrew Resnick,</p>	<p style="text-align: right;">Page 192</p> <p>1   Everybody else was in a room at CSU.</p> <p>2   Q.   That was at your request?</p> <p>3   A.   Yes.</p> <p>4   Q.   Why did you not want to appear in</p> <p>5   person?</p> <p>6   A.   Can I consult with my lawyer? It's</p> <p>7   kind of private. I'll just say it. I made a</p> <p>8   reasonable accommodation request through the</p> <p>9   Americans with Disabilities Act.</p> <p>10   Q.   Can you describe more fully why you</p> <p>11   needed an ADA accommodation?</p> <p>12   A.   A lot of anxiety, nervousness. I</p> <p>13   mean, go figure. That's why I requested it.</p> <p>14   There is a letter I sent to Dr. Bracken that</p> <p>15   explains why I did it, and I don't remember the</p> <p>16   details.</p> <p>17       MR. KELLY: Can we stop right</p> <p>18   there? He wanted to talk to me, and there is</p> <p>19   no question pending.</p> <p>20       MS. GIFFEN: Right at the moment</p> <p>21   there is no question pending.</p> <p>22   A.   Just for privacy, medical reasons,</p> <p>23   I didn't know if I was obligated to answer it,</p> <p>24   but that's okay. I did answer it.</p> <p>25   Q.   I don't intend to put that letter</p>
<p style="text-align: right;">Page 191</p> <p>1   and R.E. Ingersoll. Did you raise any</p> <p>2   objection with respect to the makeup of the</p> <p>3   committee?</p> <p>4   A.   I don't even remember. I'm sure I</p> <p>5   was told, but I don't have a memory of it. No,</p> <p>6   for this ad hoc committee, no.</p> <p>7   Q.   Okay. And you know that half of</p> <p>8   them were appointed by the administration and</p> <p>9   half by the AAUP, right?</p> <p>10   A.   I have a vague recollection of</p> <p>11   that.</p> <p>12   Q.   Okay. I think the provost sent you</p> <p>13   or Cheryl, the vice provost, sent you a</p> <p>14   description of the makeup of the committee and</p> <p>15   how things would work, right? Do you recall</p> <p>16   that?</p> <p>17   A.   Vaguely.</p> <p>18   Q.   Who was Birch Browning?</p> <p>19   A.   He's the AAUP rep, my union rep, I</p> <p>20   guess.</p> <p>21   Q.   Okay. And in addition to providing</p> <p>22   the rebuttal that we just looked at in</p> <p>23   Exhibit 20, you also appeared before the</p> <p>24   committee, right?</p> <p>25   A.   Not physically. I was on Zoom.</p>	<p style="text-align: right;">Page 193</p> <p>1   into evidence.</p> <p>2   A.   Okay. Fine.</p> <p>3   Q.   But I want to make it clear that</p> <p>4   this is something you requested. This wasn't</p> <p>5   something the committee imposed upon you that</p> <p>6   you couldn't be there live in person.</p> <p>7   A.   I understand. No, you're right.</p> <p>8   Q.   On the day in question, you -- and</p> <p>9   I think it was February 28th; was it?</p> <p>10       MS. KAMINSKI: January 28th.</p> <p>11   A.   Which one?</p> <p>12   Q.   I'm looking for when the hearing</p> <p>13   was. No, February is way too late. It's</p> <p>14   January 28th.</p> <p>15   A.   Okay.</p> <p>16   Q.   At that time you also provided to</p> <p>17   the committee a PowerPoint presentation that</p> <p>18   supported your position, correct?</p> <p>19   A.   Yes.</p> <p>20   Q.   I understand this is the PowerPoint</p> <p>21   that you presented to the committee, correct?</p> <p>22   A.   Right at the beginning of the</p> <p>23   meeting, yes.</p> <p>24   Q.   Was there any point during the ad</p> <p>25   hoc committee hearing that you were not able to</p>

<p style="text-align: right;">Page 194</p> <p>1 present evidence or argument supporting your 2 position? 3 A. If you count questions not being 4 answered, it's not true. 5 Q. What do you mean? 6 A. I asked specific direct questions 7 even to the provost, and she just stared at me 8 with her hands behind her back and didn't say 9 anything. 10 Q. What were those questions? 11 A. It's in the rebuttal which I think 12 is 20? Yeah, so can I? 13 Q. Sure. 14 A. In her discipline letter, she 15 almost starts out making four claims having to 16 do with Terri Kocevar, blah, blah, blah, and 17 she is just wrong in all four of her claims, so 18 I addressed that. I asked her about that, and 19 she just ignored me. 20 Q. So what did you ask her 21 specifically? 22 A. I don't remember the specific 23 question. In the rebuttal, though, it says get 24 your facts straight or something like that. 25 Q. Did the ad hoc committee members</p>	<p style="text-align: right;">Page 196</p> <p>1 Document Entitled Final 2 Consideration Dated 2/14/22, was 3 marked for purposes of 4 identification.) 5 - - - - - 6 Q. Handing you what's been marked as 7 Exhibit 22, you presented this to the 8 committee. Was this after the hearing? 9 A. I'm trying to refamiliarize myself. 10 Q. Feel free to look. 11 A. Do you remember the date you threw 12 out for when the committee met? 13 Q. It was January -- no, you're right, 14 it's the 28th, so this was before. 15 MS. KAMINSKI: No. 16 A. No, this would be -- 17 Q. I'm terribly sorry. You are right. 18 A. So March 4th I would be fired, so 19 it's got to be after. 20 Q. February 14th is after the ad hoc 21 hearing? 22 A. Correct. 23 Q. But before the ad hoc committee 24 issues their letter which we're going to look 25 at in a minute.</p>
<p style="text-align: right;">Page 195</p> <p>1 ask any questions? 2 A. I remember them asking one. A lady 3 asked about IRB. That's all I remember. 4 Q. What did she ask? 5 A. Just if I had any experience with 6 it. I don't remember what else. 7 Q. What did you answer? 8 A. Yes. 9 Q. Did you describe your experience? 10 A. I know I told them that I was on 11 the university committee at some point. That's 12 all I remember. 13 Q. You have submitted to IRB before? 14 A. Every project that needed it 15 throughout my career has IRB approval. 16 Q. Okay. Have you ever done a paper 17 involving human subjects where you didn't seek 18 IRB approval? 19 A. So I use a lot of archival data. 20 Like if I get it from the census people 21 data -- no, the answer is no. 22 Q. Okay. And I think, but you will 23 tell me if I'm wrong -- 24 - - - - - 25 (Thereupon, Deposition Exhibit 22, a</p>	<p style="text-align: right;">Page 197</p> <p>1 A. Correct. 2 Q. You mentioned here burden of proof? 3 A. Uh-huh. 4 Q. "That CSU must prove clearly and 5 convincingly that I intentionally, knowingly, 6 or recklessly conducted academic research 7 misconduct." 8 A. Correct. That's from the policy. 9 Q. What policy? 10 A. The one you said you would deal 11 with later, CSU's. If you type academic 12 research misconduct on the CSU website, it's in 13 there. 14 Q. The letter from the ad hoc 15 committee is not in my stuff. Do you have that 16 quickly? Do you know where that is? 17 A. It might be in Exhibit 5. 18 Q. No. It can't be Exhibit 5 because 19 this is after the fact. 20 MS. GIFFEN: You do have it 21 (indicating). You are so good. 22 - - - - - 23 (Thereupon, Deposition Exhibit 23, a 24 Letter to Dr. Bloomberg Dated 25 2/28/22, was marked for purposes of</p>

<p style="text-align: right;">Page 198</p> <p>1 identification.)</p> <p>2 - - - - -</p> <p>3 Q. Handing you what's been marked as</p> <p>4 Exhibit 23, was this the letter that you</p> <p>5 received from the ad hoc committee upholding</p> <p>6 Provost Bloomberg's decision to terminate you?</p> <p>7 MR. KELLY: Object to the form of</p> <p>8 the question, assumes facts not in evidence, is</p> <p>9 ambiguous, and I don't believe the terminology</p> <p>10 upholding is appropriate, but go ahead and</p> <p>11 answer.</p> <p>12 A. This is the letter from the ad hoc</p> <p>13 committee.</p> <p>14 Q. Yes. You see that in the ad hoc</p> <p>15 committee's conclusions, they specifically</p> <p>16 determine that the conclusions drawn by the</p> <p>17 investigative committee and the provost were</p> <p>18 arrived at irrespective of the content of</p> <p>19 Dr. Pesta's research?</p> <p>20 MR. KELLY: Where are you at?</p> <p>21 A. Yes, I'm sorry.</p> <p>22 MS. GIFFEN: The third paragraph of</p> <p>23 the second page.</p> <p>24 A. What was your question there?</p> <p>25 Q. You'll agree with me that the</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. You said correct?</p> <p>2 A. Yes.</p> <p>3 - - - - -</p> <p>4 (Thereupon, Deposition Exhibit 25,</p> <p>5 an Unfair Labor Practice Charge</p> <p>6 Document, was marked for purposes of</p> <p>7 identification.)</p> <p>8 - - - - -</p> <p>9 Q. All right. Dr. Pesta, you've now</p> <p>10 been handed Exhibit 25. Is that the Unfair</p> <p>11 Labor Practice Charge you filed with the State</p> <p>12 Employee Relations Board against the</p> <p>13 AAUP-Cleveland State?</p> <p>14 A. Correct.</p> <p>15 Q. Pardon me?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And that that was filed on</p> <p>18 April 26th, 2022?</p> <p>19 A. Correct.</p> <p>20 Q. And then beginning on page 1 of the</p> <p>21 attachment to the charge which consists of --</p> <p>22 A. Statement of facts.</p> <p>23 Q. I think it goes all the way through</p> <p>24 to page 11, and then there is a letter from</p> <p>25 your then attorney, Jay Carson, to SERB, right?</p>
<p style="text-align: right;">Page 199</p> <p>1 committee concluded that the conclusions drawn</p> <p>2 by the investigative committee and by Provost</p> <p>3 Bloomberg were arrived at irrespective of the</p> <p>4 content of your research?</p> <p>5 A. That's what they claim.</p> <p>6 Q. Will you agree with me that the ad</p> <p>7 hoc committee confirmed each of the bases for</p> <p>8 Provost Bloomberg's determination of the</p> <p>9 sanction to be levied against you?</p> <p>10 MR. KELLY: Object to the form of</p> <p>11 the question.</p> <p>12 A. I guess it's in here, so that's</p> <p>13 what they wrote.</p> <p>14 - - - - -</p> <p>15 (Thereupon, Deposition Exhibit 24, a</p> <p>16 Letter from the Office of the</p> <p>17 Provost Dated 2/28/22, was marked</p> <p>18 for purposes of identification.)</p> <p>19 - - - - -</p> <p>20 Q. Dr. Pesta, handing you what's been</p> <p>21 marked as Exhibit 24. Can you confirm that</p> <p>22 this is the letter you received from Provost</p> <p>23 Bloomberg that terminates your employment with</p> <p>24 CSU effective March 4th, 2022?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Can you tell me what page you're</p> <p>2 starting on? Is it page 1?</p> <p>3 Q. There is the two pages of the</p> <p>4 charge, right?</p> <p>5 A. Correct.</p> <p>6 Q. The next thing is marked at the</p> <p>7 bottom page 1.</p> <p>8 A. Correct.</p> <p>9 Q. And then it goes all the way to</p> <p>10 page 10 -- excuse me -- 11 and concludes with a</p> <p>11 letter to SERB from your attorney?</p> <p>12 A. You are correct.</p> <p>13 Q. So pages 1 through 11 are headed</p> <p>14 No. 6, statement of facts. Now, does that</p> <p>15 refer to the charge form itself if you look at</p> <p>16 page 2?</p> <p>17 A. Yeah. When you need more space,</p> <p>18 you've got to --</p> <p>19 Q. Sure. There is nothing the matter</p> <p>20 with it. I'm just confirming that that was</p> <p>21 your statement of the charge as listed in pages</p> <p>22 1 through 11 referred to that statement of</p> <p>23 facts section of the charge.</p> <p>24 A. Correct.</p> <p>25 Q. And you'll note that you presented</p>

<p style="text-align: right;">Page 202</p> <p>1 that statement to SERB as statements it 2 contains are true and correct to the best of my 3 knowledge and belief. Do you see that in the 4 declaration section? 5 A. Could you tell me the page? 6 Q. That's page 2. 7 A. Okay. 8 Q. No, no, no. Page 2 of the charge 9 form right under Section 6. 10 A. Yes. I see it. 11 Q. Okay. All right. And you can 12 confirm that the statements contained in the 13 statement of facts, meaning 1 through 11, are 14 your position with respect to the SERB charge 15 against the AAUP? 16 A. Yeah. It's been a while since I 17 looked at this, so can I just briefly scan it? 18 Q. Of course. 19 MS. GIFFEN: Let's go off the 20 record because it's quite lengthy. 21 (Brief recess.) 22 Q. Dr. Pesta, you've had an 23 opportunity now to review Exhibit 25. 24 A. Yes. 25 Q. I believe my question was, as you</p>	<p style="text-align: right;">Page 204</p> <p>1 A. Yes. This is it. 2 Q. Yes, you've seen this before? 3 A. Yes. 4 Q. And were you able to see the 5 affidavits that were submitted by the union? 6 A. Back when I read it I'm sure, yeah. 7 Q. Okay. What page are those on? 8 A. I haven't given them to you. I've 9 only given you the position statement. Well, 10 we can put these in. 11 - - - - - 12 (Thereupon, Deposition Exhibit 27, 13 the Affidavit of Linda Quinn, was 14 marked for purposes of 15 identification.) 16 - - - - - 17 - - - - - 18 (Thereupon, Deposition Exhibit 28, 19 the Affidavit of Birch Browning, was 20 marked for purposes of 21 identification.) 22 - - - - - 23 Q. You've been handed now Exhibits 27 24 and 28. Exhibit 27 appears to be the affidavit 25 of Linda Quinn, and Exhibit 28 appears to be</p>
<p style="text-align: right;">Page 203</p> <p>1 sit here today, do you have anything that you 2 want to add to or retract from the description 3 of the statement of facts that you have in the 4 Unfair Labor Practice Charge in Exhibit 25? 5 A. I didn't peruse it, but no. 6 Q. Did you ever receive a copy of the 7 union's response to your Unfair Labor Practice 8 Charge? 9 A. Yeah. I believe we produced that 10 in one of the folders to you guys. 11 Q. You didn't, but that's okay. 12 A. Okay. There is a bunch of emails 13 in there, though. 14 - - - - - 15 (Thereupon, Deposition Exhibit 26, a 16 Letter to Judy Knapp dated 5/25/22, 17 was marked for purposes of 18 identification.) 19 - - - - - 20 Q. Is that a copy of the position 21 statement that the union filed in response to 22 the Unfair Labor Practice Charge? 23 A. This doesn't look familiar to me. 24 MR. KELLY: This is exhibit what? 25 THE WITNESS: Twenty-six.</p>	<p style="text-align: right;">Page 205</p> <p>1 the affidavit of Birch Browning. Have you 2 received those before? 3 A. I don't remember ever 4 reading -- was this the first one, Linda Quinn, 5 Exhibit 27? 6 MR. KELLY: The question is have 7 you ever received it before. 8 A. No. 9 Q. In particular would you please read 10 the affidavit of Birch Browning which is 11 Exhibit 28 and tell us whether you disagree 12 with the statements made by Mr. Browning in the 13 exhibit? 14 A. The whole document? 15 MR. KELLY: Hold on. He just said 16 he hasn't seen this before, I believe. 17 MS. GIFFEN: I think he did, too. 18 MR. KELLY: And you want him to 19 read now all 21 paragraphs and say whether he 20 agrees or disagrees with it? I have to object. 21 MS. KAMINSKI: Just go paragraph by 22 paragraph. 23 MS. GIFFEN: I don't want to waste 24 all that time. 25 A. So do you want me to read it?</p>



<p style="text-align: right;">Page 206</p> <p>1 Q. I'm going to pick out a couple.  2 Look at paragraph 10.  3 A. Of 28 or 27? Twenty-eight, okay.  4 Q. Twenty-eight. Mr. Browning states,  5 "Dr. Pesta did not inform the CSU-AAUP about  6 the October 11th interview with the  7 investigation committee, invite them to attend,  8 or invite them to review the transcript;" is  9 that correct?  10 I'm sorry. I worded that  11 improperly. Do you agree or disagree with that  12 statement by Mr. Browning?  13 A. I don't remember. I know he was  14 present at the second, not the first.  15 Q. Now, I don't want you to feel  16 tricked later on. This is referring to the  17 investigation committee, not the ad hoc  18 committee.  19 MR. KELLY: Yes.  20 A. That's my understanding, correct.  21 Q. So this is -- are you saying that  22 Birch Browning was at the first interview of  23 the investigation committee?  24 A. I thought I said second, or maybe  25 it was the ad hoc. I don't remember. I think</p>	<p style="text-align: right;">Page 208</p> <p>1 A. I have no idea. I've never seen  2 this before.  3 Q. How about 21?  4 A. No. I'm not familiar with it.  5 Q. Okay. Okay.  6 - - - - -  7 (Thereupon, Deposition Exhibit 29, a  8 Document Labeled Investigator's  9 Memorandum, was marked for purposes  10 of identification.)  11 - - - - -  12 Q. If you could, take a moment to  13 review 29, Exhibit 29, and tell me whether you  14 ever saw the investigator's memorandum in  15 connection with your Unfair Labor Practice  16 Charge.  17 A. This is from SERB, right?  18 Q. Correct.  19 A. Yes, I have seen this before.  20 Q. Okay. And then finally  21 (indicating).  22 - - - - -  23 (Thereupon, Deposition Exhibit 30, a  24 Document Labeled Dismissal of Unfair  25 Labor Practice Charge, was marked</p>
<p style="text-align: right;">Page 207</p> <p>1 it was the second meeting, but I'm not  2 positive.  3 Q. I will tell you that I have no  4 record that Birch Browning was at either of the  5 interviews in front of the investigation  6 committee.  7 A. Well, it must have been the ad hoc.  8 Q. He was at the ad hoc committee  9 hearing.  10 A. Okay. Thank you. I agree.  11 Q. So but this paragraph,  12 paragraph 10, refers to the investigation  13 committee, and what he's saying there is that  14 you did not inform the CSU-AAUP about that  15 interview, invite them to attend, or invite  16 them to review the transcript; is that true?  17 A. I don't remember.  18 Q. In paragraph 19, Mr. Browning  19 refers to another occasion where there was a  20 recommendation of a dismissal of a faculty  21 member. Are you familiar with that instance  22 that he is referring to?  23 A. No.  24 Q. How about the reference in  25 paragraph 20?</p>	<p style="text-align: right;">Page 209</p> <p>1 for purposes of identification.)  2 - - - - -  3 Q. Have you seen Exhibit 30 before?  4 A. Yes.  5 Q. And what is Exhibit 30?  6 A. It is SERB's in the matter of me  7 versus the AAUP dismissal of the Unfair Labor  8 Practice Charge.  9 Q. Okay. Did you take any further  10 action with respect to the State Employee  11 Relations Board complaint?  12 A. No. I don't think so, no.  13 Q. Have you followed any -- filed or  14 proceeded in any other forum to object to your  15 dismissal or the union's handling of the  16 dismissal?  17 A. No. It's just this lawsuit and the  18 SERB thing.  19 Q. Okay. Have you been a party to any  20 other lawsuits?  21 A. You mean party listed, like as a  22 defendant or plaintiff?  23 Q. Yes.  24 A. A long time ago I witnessed a car  25 accident I think when I was 18 years old. I</p>

<p style="text-align: right;">Page 210</p> <p>1 was deposed.</p> <p>2 MR. KELLY: A party.</p> <p>3 Q. I actually mean, I'll be specific,</p> <p>4 as either a plaintiff or defendant in a</p> <p>5 lawsuit.</p> <p>6 A. Not that I can remember.</p> <p>7 MR. KELLY: You were divorced</p> <p>8 twice, right?</p> <p>9 MS. GIFFEN: I was about to ask.</p> <p>10 A. Yes, divorce, correct.</p> <p>11 Q. Bankruptcy?</p> <p>12 A. Chapter 11 I want to say right</p> <p>13 after I got divorced, like 2010, maybe 2011.</p> <p>14 Q. Any criminal prosecutions?</p> <p>15 A. I think it was Chapter 13. I'm</p> <p>16 sorry. No.</p> <p>17 Q. By the way, what was -- you said</p> <p>18 the divorce was when and the bankruptcy was</p> <p>19 when?</p> <p>20 A. To the best of my memory, 2010,</p> <p>21 official 2011. The bankruptcy might have been</p> <p>22 a year before.</p> <p>23 Q. Around the same time?</p> <p>24 A. Around the same time.</p> <p>25 - - - - -</p>	<p style="text-align: right;">Page 212</p> <p>1 research misconduct. I mean, if this was</p> <p>2 electronic, I could just search for that</p> <p>3 phrase.</p> <p>4 Q. If you turn to page -- it's the</p> <p>5 fourth page of the document. It's Ohio</p> <p>6 Administrative Code 3344-28-02 definitions.</p> <p>7 A. Uh-huh.</p> <p>8 Q. And is that the definition of</p> <p>9 academic research misconduct to which you</p> <p>10 refer?</p> <p>11 A. So it's the burden of proof I was</p> <p>12 talking about with intentionally, knowingly,</p> <p>13 recklessly, but this does define academic</p> <p>14 misconduct.</p> <p>15 Q. That doesn't say it has to be</p> <p>16 intentional or knowing or reckless; does it?</p> <p>17 A. I think it's in the policy, but, I</p> <p>18 mean, I haven't looked at this in a while.</p> <p>19 Q. The other thing --</p> <p>20 A. So can I ask just for</p> <p>21 clarification? I don't know if this is from</p> <p>22 CSU or not. Whatever CSU has on the website is</p> <p>23 what I used.</p> <p>24 Q. I'll represent to you that this</p> <p>25 is --</p>
<p style="text-align: right;">Page 211</p> <p>1 (Thereupon, Deposition Exhibit 31,</p> <p>2 Policy 3344-28-01, was marked for</p> <p>3 purposes of identification.)</p> <p>4 - - - - -</p> <p>5 Q. Handing you, Dr. Pesta, what has</p> <p>6 been marked Exhibit 31, is this the research</p> <p>7 misconduct policy that you've referred to a</p> <p>8 couple of times today?</p> <p>9 MR. KELLY: If you know. Look it</p> <p>10 over first.</p> <p>11 A. I don't know if these numbers come</p> <p>12 from CSU or Ohio Administrative Law, but it</p> <p>13 looks like the policy I got off of CSU's</p> <p>14 website.</p> <p>15 Q. Okay. I'm interested in two</p> <p>16 particular sections because you said at some</p> <p>17 point that in order to be found responsible for</p> <p>18 research misconduct under the policy, you had</p> <p>19 to be found to have knowingly, recklessly, or</p> <p>20 intentionally engaged in that misconduct,</p> <p>21 right?</p> <p>22 A. Correct.</p> <p>23 Q. Where is that in the policy?</p> <p>24 MR. KELLY: If you know.</p> <p>25 A. It's the definition of academic</p>	<p style="text-align: right;">Page 213</p> <p>1 MS. GIFFEN: Let's go off the</p> <p>2 record.</p> <p>3 (Discussion off record.)</p> <p>4 MS. GIFFEN: Back on the record.</p> <p>5 Q. The second piece that I'm</p> <p>6 interested in is you said you believe that you</p> <p>7 had a -- that the investigative committee had a</p> <p>8 requirement to allow you to pose questions to</p> <p>9 the complainants. Pardon me?</p> <p>10 A. I know it's on the website. I</p> <p>11 mean, I took it right from the website, but I</p> <p>12 haven't looked at it in a while. My confusion</p> <p>13 is that I don't remember ever seeing -- you</p> <p>14 know, you said it's ORC or OAC or whatever, but</p> <p>15 that's not on the website, so I just wanted to</p> <p>16 make sure the document is the same.</p> <p>17 Q. If you go to --</p> <p>18 MR. KELLY: Six R.</p> <p>19 Q. Halfway down, Rule 3344-28-06.</p> <p>20 A. What page? I'm sorry. Oh, got it.</p> <p>21 Do you have the page number? Yeah, I got it.</p> <p>22 Q. Okay. And if you could, this</p> <p>23 section, as far as I understand, is about</p> <p>24 conducting the investigation.</p> <p>25 A. Uh-huh.</p>

<p style="text-align: right;">Page 214</p> <p>1 Q. And I'm wondering if this is the</p> <p>2 section where you saw a right to cross-examine</p> <p>3 the witnesses.</p> <p>4 MR. KELLY: Read through it</p> <p>5 carefully. I don't want to put words in,</p> <p>6 either, but it's --</p> <p>7 MS. GIFFEN: Pardon?</p> <p>8 MR. KELLY: The provision I believe</p> <p>9 Dr. Pesta is referring to is in here twice at</p> <p>10 3(K) and -- I'm sorry -- not 3(K), at 3(I) and</p> <p>11 at 6(K).</p> <p>12 MS. GIFFEN: 3(K) and 6(K), okay.</p> <p>13 MR. KELLY: 3(I).</p> <p>14 MS. GIFFEN: So if we read 3(I),</p> <p>15 you think it's in here somewhere?</p> <p>16 MR. KELLY: It's in here twice.</p> <p>17 A. Can we manually number the pages?</p> <p>18 Would that help? I don't find it.</p> <p>19 Q. All right. Well, we'll leave it.</p> <p>20 MR. KELLY: One place you will find</p> <p>21 it is 6(K).</p> <p>22 MS. GIFFEN: Yeah, that's about</p> <p>23 inquiry, though. It's not the investigation.</p> <p>24 MR. KELLY: I disagree. That's</p> <p>25 about investigation.</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. Well, we'd have to read through all</p> <p>2 of the rebuttals.</p> <p>3 A. Fair enough.</p> <p>4 - - - - -</p> <p>5 (Thereupon, Deposition Exhibit 32,</p> <p>6 Plaintiff's Response to Defendants'</p> <p>7 First Requests for Documents, was</p> <p>8 marked for purposes of</p> <p>9 identification.)</p> <p>10 - - - - -</p> <p>11 Q. Handing you what's been marked as</p> <p>12 Exhibit 32, Dr. Pesta, and can you confirm that</p> <p>13 this is your responses to the requests for</p> <p>14 documents that we made to you in this case?</p> <p>15 A. Yes, it is. Yes.</p> <p>16 MR. KELLY: Thirty-two?</p> <p>17 THE WITNESS: Thirty-two.</p> <p>18 Q. I'm specifically referring to</p> <p>19 Request No. 2 that asks for any websites and/or</p> <p>20 social media accounts concerned or relating to</p> <p>21 Global Ancestry, and after an objection was</p> <p>22 interposed, you made reference to a dormant</p> <p>23 funding campaign regarding your termination.</p> <p>24 What is that?</p> <p>25 A. That's the HPDF -- oh, wait a</p>
<p style="text-align: right;">Page 215</p> <p>1 MS. GIFFEN: Pardon me?</p> <p>2 MR. KELLY: Five is about inquiry.</p> <p>3 Six is about the investigation.</p> <p>4 MS. GIFFEN: That's what I'm</p> <p>5 saying. Oh, you think it's in 6(K)?</p> <p>6 MR. KELLY: Yes.</p> <p>7 MS. GIFFEN: 6(K) is comments on</p> <p>8 the draft investigation report.</p> <p>9 MR. KELLY: Hold on. We'll go over</p> <p>10 this tomorrow.</p> <p>11 MS. GIFFEN: All right.</p> <p>12 MR. KELLY: I must say, Ms. Giffen,</p> <p>13 this is not -- I take your representation for</p> <p>14 what it is, but it looks different from what we</p> <p>15 have.</p> <p>16 THE WITNESS: It does.</p> <p>17 MR. KELLY: From what we pulled off</p> <p>18 the website.</p> <p>19 MS. GIFFEN: The CSU website?</p> <p>20 MR. KELLY: Yes.</p> <p>21 MS. GIFFEN: Okay. We'll get it</p> <p>22 straightened out.</p> <p>23 A. If it helps, I'm sure I cite the</p> <p>24 specific policy in Exhibit 5. I think it is</p> <p>25 the big fat one in one of my rebuttals.</p>	<p style="text-align: right;">Page 217</p> <p>1 minute.</p> <p>2 Q. That is not?</p> <p>3 A. No, it is not. I'm sorry.</p> <p>4 Q. Okay.</p> <p>5 A. So it's a charity for me to help</p> <p>6 pay legal bills.</p> <p>7 Q. In common parlance can we call it a</p> <p>8 GoFundMe site?</p> <p>9 A. We can, but it's GiveSendGo if it</p> <p>10 really matters.</p> <p>11 Q. I realize that I'm using probably a</p> <p>12 trademark reference to a different site.</p> <p>13 A. Okay.</p> <p>14 Q. And what is the publication of on</p> <p>15 undark.org?</p> <p>16 A. So they contacted me, the author,</p> <p>17 Angela, I have no idea, it's something like</p> <p>18 S-I-I-N-I-A or something, asked if I would</p> <p>19 answer some questions, and so I did.</p> <p>20 Q. Are you sure that that's the</p> <p>21 correct URL for the site because it would not</p> <p>22 come up when I tried it.</p> <p>23 A. I could double-check at home.</p> <p>24 Q. Would you, please?</p> <p>25 A. But I'll say I don't come</p>

<p style="text-align: right;">Page 218</p> <p>1 into -- it's a long article. I'm somewhere in  2 the middle somewhere. But you haven't seen it,  3 the article, at all?  4 Q. No, I haven't at all.  5 A. If I don't write it down, I'm going  6 to forget.  7 Q. Also, did you have -- was there an  8 article published in Quillette?  9 A. Yes.  10 Q. What is Quillette?  11 A. It's a magazine, an on-line  12 magazine in Australia. That's it. They  13 publish stories.  14 Q. All right. I'm asking specifically  15 about the undark one because your counsel  16 provided us a couple of other references  17 including the Quillette article.  18 A. Okay.  19 Q. So that's the one we don't have.  20 And you said that what I'll call the GoFundMe  21 page is dormant. What do you mean?  22 A. Well, I mean, initially I got, you  23 know, people to donate, but that was what, a  24 year, almost two years ago. So it just dried  25 up, and I just decided to close it or make it</p>	<p style="text-align: right;">Page 220</p> <p>1 email right now.  2 A. Oh.  3 Q. Whatever your conversation or  4 communication was with him.  5 A. No. On that date, I mean, I know I  6 had a Zoom meeting. I don't remember the  7 context.  8 Q. Do you remember anything about what  9 he told you or asked you about in connection  10 with the investigation?  11 A. If I could see the email that set  12 up the meeting, the topic would be there.  13 Q. Well, I have it somewhere in this  14 mass of paper.  15 A. Yeah, I'm just blocking on that  16 right now. Oh, it had to do with destroying  17 the data, I believe. Yes, I'm pretty sure it  18 did, yeah.  19 Q. That's one of the things that he  20 requested that you do because the NIH said in  21 its May 27th letter that it had to be done,  22 right?  23 A. Correct.  24 Q. And what did you tell him at that  25 time?</p>
<p style="text-align: right;">Page 219</p> <p>1 dormant.  2 Q. Tell me about what were your  3 communications with Ken Kahn about the  4 investigation and the NIH request for  5 information, anything having to do with the  6 subject matter of this lawsuit?  7 A. I thought we uploaded one email  8 that I have because that was more -- it was on  9 Zoom, the actual meeting. Other than that, I  10 mean, I don't remember. I'd have to refresh my  11 memory on that email.  12 Q. Okay. But so let's first go back  13 in time, that in June of 2021 after the NIH  14 letter of May 27th finding the violation, you  15 communicated with Ken Kahn about the subject  16 matter of the investigation, right?  17 A. Yes.  18 Q. Did you meet with him in person, or  19 it was on Zoom?  20 A. It was Zoom.  21 Q. Do you remember anything about the  22 substance of that conversation with Ken Kahn?  23 A. I remember the email. This might  24 not be the one you're talking about.  25 Q. I'm not actually referring to an</p>	<p style="text-align: right;">Page 221</p> <p>1 A. Well, I think we were working on  2 it. I don't remember.  3 Q. Did you have any other  4 communications with Ken Kahn about the subject  5 matter of the lawsuit?  6 A. Yeah. Early on, maybe even before  7 the investigation formally started, he sent me  8 an email saying that this student complained  9 and I think even made a FOIA request and  10 demanded to look at my grades and whether I  11 treat African-Americans poorly in grading.  12 Q. Okay. And what did he say about  13 that?  14 A. He said that the central  15 administration was going to investigate that.  16 Q. Do you know what happened with that  17 investigation?  18 A. I never got any feedback after that  19 I don't think.  20 Q. And no action was taken with  21 respect to that complaint as far as you know?  22 A. Well, I think it's a part of this,  23 too, but it's not in any of the documents we  24 reviewed today.  25 Q. It's a part of it how?</p>

<p style="text-align: right;">Page 222</p> <p>1 A. My understanding and memory is the 2 motivation of whoever wrote that letter was 3 based on the Lasker publication. 4 Q. I guess my question is, did any 5 part of the investigation that we've been 6 spending the last however many hours talking 7 about incorporate any questions to you or 8 concerns about your teaching, what you were 9 teaching in your classes? 10 A. No. 11 Q. Isn't it true that you never taught 12 in the classroom, you did not base any of your 13 curriculum on the publications listed in your 14 CV that relate to the subject matter of the 15 lawsuit? 16 MR. KELLY: Object to the form of 17 the question. That's ambiguous. You can 18 answer it if you can. 19 A. I don't really understand it. 20 Q. Let me ask this, have you 21 introduced to your students this Lasker paper? 22 A. No. 23 Q. We went through a list of -- 24 A. Forty-five. 25 Q. -- of 45 of your publications, and</p>	<p style="text-align: right;">Page 224</p> <p>1 about? 2 A. It's just Intro to HR either at the 3 undergrad or grad level, human resource 4 management. 5 Q. What does your ten-minute lecture 6 consist of if the students are interested? 7 A. Yeah, I give the ten-minute lecture 8 whether they are interested or not. If there 9 are more questions -- 10 Q. I see. It could get longer than 11 ten minutes? 12 A. Correct. 13 Q. I see. Tell us what the ten 14 minutes consist of. 15 A. I give a general overview on the 16 hierarchy of cognitive abilities. There is a 17 hierarchy with cognitive abilities with g. Are 18 you familiar with the concept, with g, lower 19 case g, at the top, and that it's the general 20 mental ability part of this hierarchy that 21 really predicts, nothing else does, like level 22 2 and level 3 abilities. 23 Q. It's what you were referring to 24 earlier, that that score -- or maybe this is 25 different. I was going to say that that score</p>
<p style="text-align: right;">Page 223</p> <p>1 I have -- I no longer remember what the count 2 was. 3 A. Neither do I. 4 Q. About those papers that dealt with 5 your research involving race or other 6 population subgroups and intelligence, have you 7 used those papers in any of your teaching? 8 A. I do talk about disparate impact in 9 hiring situations and focus on race for 10 cognitive ability tests, physical tests for 11 sex, but I don't think I specifically 12 referenced a paper of mine. 13 Q. Do you discuss with them the 14 controversial nature of your research? 15 A. I am -- I give like a ten-minute 16 lecture on IQ, and it depends on student 17 interest in that particular class. If they ask 18 questions, it goes longer. But, yeah, I don't 19 get into my research. 20 Q. Okay. It's interesting that you 21 said a ten-minute lecture, so you know what the 22 ten minutes must be. 23 A. I've taught class like over 100 24 times. 25 Q. What is the class we're talking</p>	<p style="text-align: right;">Page 225</p> <p>1 strongly correlates with success or well-being. 2 I think well-being is what you said. 3 A. Oh, yes. So I get into some of the 4 correlations, and then I explain when you use 5 cognitive ability -- it's like a two-sentence 6 part. When you use cognitive ability tests, 7 you will create adverse impact against 8 minorities. 9 Q. Do you use in any other way in that 10 lecture whether genetics form the basis for the 11 differences in intellectual ability? 12 A. So my philosophy is this is the 13 most applied degree there is, the MBA. 14 Q. The most what? 15 A. The applied degree. Students don't 16 want to get into Lasker. I don't usually get 17 that technical in an Intro to HR class. 18 Q. Uh-huh. Okay. Have you ever done 19 any coursework in genetics? 20 A. No. Maybe as an undergrad. I 21 don't know. 22 Q. Do you consider yourself an expert 23 in genetics? 24 A. You know, I think expert is not all 25 or nothing. You know, you can rank people on</p>



<p style="text-align: right;">Page 226</p> <p>1 their expertise. I think moderately, but no.</p> <p>2 Q. Okay. Would you consider yourself</p> <p>3 an expert in analysis of intelligence and</p> <p>4 testing for intelligence?</p> <p>5 A. That's kind of general. I mean, at</p> <p>6 what part of it?</p> <p>7 Q. I know. I'm trying to figure it</p> <p>8 out.</p> <p>9 A. Yeah. Can you repeat? I'm sorry.</p> <p>10 Q. Maybe this is the way I'll ask the</p> <p>11 question. What did you contribute to the</p> <p>12 Lasker paper?</p> <p>13 A. What did I contribute?</p> <p>14 Q. What was your particular area of</p> <p>15 expertise?</p> <p>16 A. I did some of the statistical</p> <p>17 analyses, a lot of the write-up. It turns out</p> <p>18 my coauthors aren't very good writers. So,</p> <p>19 yeah, and just the strategic planning on the</p> <p>20 article itself, you know, you break it up into</p> <p>21 parts.</p> <p>22 Q. Did you retain any of the drafts of</p> <p>23 the paper?</p> <p>24 A. I don't think so. I mean, I could</p> <p>25 check.</p>	<p style="text-align: right;">Page 228</p> <p>1 Q. Okay. All right. Dr. Pesta, is</p> <p>2 this letter familiar to you because it was</p> <p>3 produced during the investigation or because</p> <p>4 Ken Kahn or Forrest Faison gave it to you in</p> <p>5 June of --</p> <p>6 A. I think it was in the binder or</p> <p>7 this final report, Exhibit 5. That's my</p> <p>8 memory.</p> <p>9 Q. All right. So you don't remember</p> <p>10 actually getting it at the time in June?</p> <p>11 A. No, I don't remember.</p> <p>12 Q. Okay.</p> <p>13 - - - - -</p> <p>14 (Thereupon, Deposition Exhibit 34, a</p> <p>15 Form 990EZ, was marked for purposes</p> <p>16 of identification.)</p> <p>17 - - - - -</p> <p>18 Q. I'm handing you what's been marked</p> <p>19 as Exhibit 34. Do you recognize this document?</p> <p>20 A. Yes.</p> <p>21 Q. And this is an income -- actually,</p> <p>22 it's an exemption from income tax form for the</p> <p>23 Human Phenome Diversity Foundation, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Did you file this? And let me tell</p>
<p style="text-align: right;">Page 227</p> <p>1 MS. GIFFEN: Okay. We are about to</p> <p>2 go to a different subject, and I need about</p> <p>3 five minutes to get my act together again.</p> <p>4 (Brief recess.)</p> <p>5 MS. GIFFEN: Back on the record.</p> <p>6 Q. Dr. Pesta, we were talking a little</p> <p>7 bit ago about communications that you had with</p> <p>8 Ken Kahn.</p> <p>9 - - - - -</p> <p>10 (Thereupon, Deposition Exhibit 33, a</p> <p>11 Letter for Dr. Pesta from Dr. Faison</p> <p>12 and Dr. Kahn, was marked for</p> <p>13 purposes of identification.)</p> <p>14 - - - - -</p> <p>15 Q. We're handing you what's been</p> <p>16 marked as Exhibit 33. Did you ever receive</p> <p>17 this communication from Ken Kahn?</p> <p>18 A. I'm refreshing my memory here.</p> <p>19 This was from Kahn?</p> <p>20 Q. Yeah. He's one of the authors. I</p> <p>21 didn't want -- because I asked you that</p> <p>22 question and we didn't talk about it, I didn't</p> <p>23 know if you got it from Ken Kahn or not.</p> <p>24 A. I don't know who I got it from, but</p> <p>25 this is familiar to me.</p>	<p style="text-align: right;">Page 229</p> <p>1 you that this was printed off oddly. It should</p> <p>2 go the other way, but it contains, as far as we</p> <p>3 can tell, all of the right information. Did</p> <p>4 you file this on behalf of HPDF?</p> <p>5 A. I did.</p> <p>6 Q. Tell me about when was HP --</p> <p>7 A. I didn't make the name up.</p> <p>8 Q. Who did by the way?</p> <p>9 A. John.</p> <p>10 Q. When was it formed? Who was it</p> <p>11 formed by? What was its purpose?</p> <p>12 A. So the when, I'm guessing probably</p> <p>13 2018 or early 2019. What was its purpose? Oh,</p> <p>14 who? You asked who? Me and John. What was</p> <p>15 its purpose? Two purposes; one was to support</p> <p>16 researchers who want to research this area, and</p> <p>17 the other was to help John further his</p> <p>18 education.</p> <p>19 Q. Are you allowed to have a 501(c)</p> <p>20 that seeks to help a specific individual with</p> <p>21 their educational expenses?</p> <p>22 A. All I can say is the IRS approved</p> <p>23 it. They gave us the tax exempt status.</p> <p>24 Q. Do you have the articles of</p> <p>25 incorporation of HP --</p>

<p style="text-align: right;">Page 230</p> <p>1 A. DF.</p> <p>2 Q. -- DF?</p> <p>3 A. I don't think so, but I could check</p> <p>4 my computer.</p> <p>5 Q. We'd appreciate if you would do</p> <p>6 that. And also if there is a code of</p> <p>7 regulations or any registrations with the</p> <p>8 Secretary of State's Office with respect to</p> <p>9 HPDF -- I got it right that time.</p> <p>10 A. Yes.</p> <p>11 Q. Do you have any of those?</p> <p>12 A. I'd have to check.</p> <p>13 Q. Okay. If you would, please, we'd</p> <p>14 appreciate it.</p> <p>15 A. You know, if I don't</p> <p>16 write -- because there was another thing that</p> <p>17 you wanted me to produce, and I don't remember</p> <p>18 what it was.</p> <p>19 Q. Afterwards we'll send an email</p> <p>20 because we've described a couple of things, and</p> <p>21 we'll correspond with your counsel.</p> <p>22 A. Thank you.</p> <p>23 Q. Okay. Now, so the two purposes</p> <p>24 that you described to me was to support</p> <p>25 specific research.</p>	<p style="text-align: right;">Page 232</p> <p>1 said I want to support your research?</p> <p>2 A. Research in this area.</p> <p>3 Q. And it's always advantageous to do</p> <p>4 that through a 501(c)(3) because then it's tax</p> <p>5 deductible to the donor, right?</p> <p>6 A. Correct.</p> <p>7 Q. And the second purpose was to help</p> <p>8 John further his education. What did that</p> <p>9 mean?</p> <p>10 A. I don't think he used this fund for</p> <p>11 his tuition, but that could be an example.</p> <p>12 Q. And the tuition you're referring to</p> <p>13 is the tuition that he had to pay to Cleveland</p> <p>14 State for the one credit hour?</p> <p>15 A. I think he did it at least twice,</p> <p>16 two semesters.</p> <p>17 (Discussion off record.)</p> <p>18 Q. All right. So it could have been</p> <p>19 used to pay -- and that would have been for one</p> <p>20 credit hour, right?</p> <p>21 A. Correct.</p> <p>22 Q. So it could have been used for that</p> <p>23 purpose, but you're unsure?</p> <p>24 A. Correct.</p> <p>25 Q. Who keeps the books of HPDF?</p>
<p style="text-align: right;">Page 231</p> <p>1 A. I'm waffling on the word specific.</p> <p>2 Q. Okay. You describe it again.</p> <p>3 A. Research related to intelligence</p> <p>4 and group differences.</p> <p>5 Q. Now I hear what you're saying. It</p> <p>6 wasn't to fund a specific research paper. It</p> <p>7 was to fund research in that area; is that</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. Why did you think that was</p> <p>11 necessary?</p> <p>12 A. Because it's -- I don't know. I</p> <p>13 mean, first, it's very controversial research,</p> <p>14 and there was a demand for donations. So</p> <p>15 business professionally, we capitalized on it.</p> <p>16 Q. There was a demand for donations</p> <p>17 from whom?</p> <p>18 A. Private people.</p> <p>19 Q. I'm not understanding what you're</p> <p>20 saying. People said, oh, get a 501(c)(3), and</p> <p>21 then I can give you money?</p> <p>22 A. I don't know if they said get a</p> <p>23 501(c)(3), but people wanted to give money for</p> <p>24 this purpose.</p> <p>25 Q. So you were encountering folks that</p>	<p style="text-align: right;">Page 233</p> <p>1 A. KeyBank. Not officially, but we</p> <p>2 just log into KeyBank, and every dollar we</p> <p>3 spent was through the HPDF account at KeyBank,</p> <p>4 so you can just track the history.</p> <p>5 Q. Are you the principal party</p> <p>6 responsible for the account at Key?</p> <p>7 A. Yeah. I'm listed first, and John</p> <p>8 is second.</p> <p>9 Q. Okay. Okay. As I understand it,</p> <p>10 the HPDF funds were used to acquire that</p> <p>11 computer that we were talking about earlier?</p> <p>12 A. Correct.</p> <p>13 Q. The desktop that housed --</p> <p>14 A. The Newegg desktop.</p> <p>15 Q. Yeah, the Newegg desktop. And I</p> <p>16 also understand that HPDF funds were used for</p> <p>17 Uber rides and pizza; is that right?</p> <p>18 A. Food and Uber rides, correct.</p> <p>19 Q. Other than maybe John's tuition,</p> <p>20 the computer, the Uber, and the pizza or other</p> <p>21 food, what were HPDF funds expended for?</p> <p>22 A. Grant money to -- we didn't</p> <p>23 formalize the process, but researchers would</p> <p>24 apply for grants, and we'd review them and give</p> <p>25 out awards.</p>

<p style="text-align: right;">Page 234</p> <p>1 Q. How many grants have been awarded?</p> <p>2 A. All I know is we had something like</p> <p>3 \$100,000 in there, and there is nothing now.</p> <p>4 Q. Did you keep a record of what grant</p> <p>5 requests came in and what money went out?</p> <p>6 A. KeyBank would have that, you know,</p> <p>7 if we sent that out.</p> <p>8 Q. For the grant requests?</p> <p>9 A. No, but the amount that --</p> <p>10 Q. Did you require potential grantees</p> <p>11 to send to you applications for grants, tell</p> <p>12 you what it was for, et cetera?</p> <p>13 A. It was more informal than that. We</p> <p>14 were going to stream -- you know, scale up and</p> <p>15 be more bureaucratic, but everything blew up</p> <p>16 with it.</p> <p>17 Q. Why did everything blow up with it?</p> <p>18 A. Well, it got me into trouble here.</p> <p>19 We just didn't think it was worth pursuing.</p> <p>20 Q. Okay. Has it been dissolved?</p> <p>21 A. Yes, about five months ago.</p> <p>22 Q. Did you file articles of</p> <p>23 dissolution with the Secretary of State's</p> <p>24 Office?</p> <p>25 A. And we got the certificate back or</p>	<p style="text-align: right;">Page 236</p> <p>1 presume. Oh, no, it's not.</p> <p>2 MR. KELLY: This is for the 2019</p> <p>3 calendar year.</p> <p>4 THE WITNESS: Yeah, okay.</p> <p>5 A. So I just -- I was wrong logically.</p> <p>6 I thought I could make an inference here, but I</p> <p>7 can't.</p> <p>8 Q. As I understand it, you would</p> <p>9 have -- because this was for the tax year 2019,</p> <p>10 you would have filed it sometime in 2020.</p> <p>11 A. Okay.</p> <p>12 Q. That's usually what happens. I'm</p> <p>13 not saying it did in this circumstance, and</p> <p>14 this is not a signed copy.</p> <p>15 A. Okay.</p> <p>16 Q. Not as far as I can tell.</p> <p>17 MS. GIFFEN: We don't have it?</p> <p>18 MR. NEEL: No.</p> <p>19 Q. All right. So my question was, it</p> <p>20 would make sense that most of the money,</p> <p>21 because you said there was a total of \$100,000,</p> <p>22 most of the money came in after 2019?</p> <p>23 A. Correct.</p> <p>24 Q. Help me understand why John Fuerst</p> <p>25 was not listed as a user with access to the TCP</p>
<p style="text-align: right;">Page 235</p> <p>1 whatever it's called.</p> <p>2 Q. We'll add that to the list of</p> <p>3 stuff.</p> <p>4 A. Okay.</p> <p>5 Q. This 2019 tax form says that you</p> <p>6 had received \$21,470 in contributions that</p> <p>7 year, right?</p> <p>8 A. Correct.</p> <p>9 Q. And if it was formed in 2018, do</p> <p>10 you think most of the \$100,000 that you</p> <p>11 referred to came in after 2019?</p> <p>12 A. Yeah. So this logically implies</p> <p>13 that we started it in -- that doesn't make</p> <p>14 sense. But, yes, to your question the answer</p> <p>15 is yes.</p> <p>16 Q. What do you mean logically it</p> <p>17 doesn't make sense?</p> <p>18 A. Just looking at 2019, I said we</p> <p>19 started it in 2018. That was my guess.</p> <p>20 Q. That was what you said, yes.</p> <p>21 A. But, oh, this would be for that</p> <p>22 time. That makes sense. I retract that.</p> <p>23 Strike it.</p> <p>24 Q. What do you mean?</p> <p>25 A. This is filed 2019 for 2018, I</p>	<p style="text-align: right;">Page 237</p> <p>1 data or as a collaborator --</p> <p>2 MR. KELLY: Object to form.</p> <p>3 Q. -- for the TCP data?</p> <p>4 A. Okay.</p> <p>5 MR. KELLY: Object to the form of</p> <p>6 the question, ambiguous, confusing.</p> <p>7 A. I believe he was listed for TCP not</p> <p>8 as a collaborator, but as a student researcher.</p> <p>9 The rules are complicated. Even though we</p> <p>10 collaborated, he was not a collaborator</p> <p>11 according to NIH's policy. But for later</p> <p>12 applications, not TCP, we added external people</p> <p>13 from different universities, and in that case</p> <p>14 NIH policy is your student researcher now</p> <p>15 becomes a collaborator.</p> <p>16 Q. Do you know what NIH rules you're</p> <p>17 referring to when you say that?</p> <p>18 A. The specific numbers, no.</p> <p>19 Q. Okay. But I don't want to go</p> <p>20 through it now.</p> <p>21 A. Uh-huh.</p> <p>22 Q. But it's referred to in your</p> <p>23 various rebuttals as I understand it.</p> <p>24 A. Correct.</p> <p>25 Q. And you would rely on those now for</p>

<p style="text-align: right;">Page 238</p> <p>1 the support for that conclusion?</p> <p>2 A. Correct.</p> <p>3 Q. And you mentioned earlier that when</p> <p>4 you were in I think it was the first interview</p> <p>5 with the committee that you didn't think John's</p> <p>6 personality was consistent with him wanting to</p> <p>7 talk to CSU. What was it about his personality</p> <p>8 that leads you to that conclusion?</p> <p>9 A. Maybe it was the position that he</p> <p>10 was in, because he spent a lot of time on this,</p> <p>11 and he wanted to see it through, and he</p> <p>12 believed that his interpretation of the NHI</p> <p>13 contract was correct, and then we were waiting</p> <p>14 for an appeal, but they never -- they never</p> <p>15 addressed it.</p> <p>16 Q. Anything about the way he is or his</p> <p>17 viewpoint that led to that conclusion?</p> <p>18 A. No.</p> <p>19 Q. Okay. Who was the principal</p> <p>20 drafters of the DARs?</p> <p>21 A. For TCP?</p> <p>22 Q. Yes.</p> <p>23 A. John and I co-drafted.</p> <p>24 Q. Okay.</p> <p>25 - - - -</p>	<p style="text-align: right;">Page 240</p> <p>1 rarely used, but I did search it for the</p> <p>2 document requests.</p> <p>3 Q. When we asked for -- because we</p> <p>4 asked you for your correspondence with Fuerst</p> <p>5 and your other coauthors, right?</p> <p>6 A. Yes.</p> <p>7 Q. And you provided us what you found?</p> <p>8 A. What I found, yes.</p> <p>9 Q. If you refer to, and, again, this</p> <p>10 is going backwards, so if we look on the first</p> <p>11 page of the whole thread, it begins on</p> <p>12 March 2nd, 2018, is the first email, and the</p> <p>13 last one appears to be April 4th, 2018.</p> <p>14 A. March 2nd.</p> <p>15 Q. Yes.</p> <p>16 A. And then April 4th, correct.</p> <p>17 Q. Yeah. And I notice in the very</p> <p>18 first email of March 2nd, 2018, you said the</p> <p>19 preferred email address was what you just said,</p> <p>20 right, B Pesta?</p> <p>21 A. By preferred you mean my private</p> <p>22 email?</p> <p>23 Q. I don't know. You wrote it.</p> <p>24 A. I'm having trouble seeing it.</p> <p>25 Q. The very first -- I'm sorry. It</p>
<p style="text-align: right;">Page 239</p> <p>1 (Thereupon, Deposition Exhibit 35,</p> <p>2 an Email String, was marked for</p> <p>3 purposes of identification.)</p> <p>4 - - - -</p> <p>5 Q. I realize this writing is a bit</p> <p>6 small.</p> <p>7 A. Yeah.</p> <p>8 Q. Can you confirm, Dr. Pesta, that</p> <p>9 this is communications between you and John</p> <p>10 Fuerst in April of 2018?</p> <p>11 A. Yeah. This is from the CSU</p> <p>12 account.</p> <p>13 Q. And this --</p> <p>14 A. Email account.</p> <p>15 Q. This is Exhibit 35. How do you</p> <p>16 differentiate between what is your personal</p> <p>17 account email?</p> <p>18 A. I don't have access to it anymore,</p> <p>19 but it was.</p> <p>20 Q. Not the CSU.</p> <p>21 A. Oh, personal? Bpesta22, first</p> <p>22 initial last name.</p> <p>23 Q. Do you have any other personal</p> <p>24 email accounts that you use?</p> <p>25 A. I looked. I have an Outlook that I</p>	<p style="text-align: right;">Page 241</p> <p>1 isn't the very first. It's the next to the</p> <p>2 last. Let's do it the way I started doing it</p> <p>3 instead of starting in the middle which that</p> <p>4 question would have done. Go to the very last</p> <p>5 page.</p> <p>6 A. Okay.</p> <p>7 Q. And this is an email from John to</p> <p>8 you, right?</p> <p>9 A. Yes.</p> <p>10 Q. And he's referring to a meeting at</p> <p>11 a Pho restaurant and how nice it was to get</p> <p>12 together with you, right?</p> <p>13 A. I do remember this. This is when I</p> <p>14 first met with him in person.</p> <p>15 Q. We're going all the way back in</p> <p>16 time to the beginning of when you're talking</p> <p>17 about the research project, right?</p> <p>18 A. Correct.</p> <p>19 Q. He refers to following up on the</p> <p>20 genome data sets. Did that include the TCP</p> <p>21 data set? Were you discussing specifically the</p> <p>22 TCP data set at that point?</p> <p>23 A. When we were at the Pho restaurant,</p> <p>24 that's when we agreed to collaborate and apply</p> <p>25 for TCP.</p>

<p style="text-align: right;">Page 242</p> <p>1 Q. Okay. And then about in the 2 middle, he says, "We wish to start with 3 trajectories of complex phenotypes," which is 4 TCP, right? 5 A. Correct, and he said it does not 6 require. 7 Q. "It does not require IRB approval 8 and since the sample characteristics are 9 ideal." Right, that's what he says? 10 A. Correct. 11 Q. So when he was talking about the 12 IRB approval at that point, he was referring to 13 the NIH -- 14 A. Yeah. It's in the Exhibit 5 where 15 it's a table. 16 Q. I just want to finish the question. 17 I know it's late. We're almost through. 18 A. No, go ahead. 19 Q. He was referring to the IRB 20 approval section of the NIH rules, right? 21 A. Correct. 22 Q. He wasn't saying and I'm sure 23 Cleveland State doesn't require it, either? 24 A. I don't know why he would. I mean, 25 he didn't say any other place didn't. I mean,</p>	<p style="text-align: right;">Page 244</p> <p>1 paragraph. I don't know what he was getting at 2 there. 3 Q. Okay. Then he says he attaches a 4 proposal nominally to test for sex differences 5 in relation to brain differences, and that 6 is -- 7 A. 18070. 8 Q. That's right. That's the original 9 request, right? 10 A. The first one, yes. 11 Q. Okay. And then he says, "This 12 would represent a genuinely interesting 13 replication study and a sneaky way to request 14 and possibly present the ancestry x cognitive 15 outcome data." What did you take from that? 16 A. Yeah, I don't remember. I remember 17 reading this letter, but it was six years ago. 18 Let me read it again. Well, it was on sex 19 differences, so we wouldn't -- I mean, we 20 didn't even access the data for this first 21 project, but it was on sex differences, so I 22 don't know why he says cognitive outcome data, 23 or, I'm sorry, ancestry. 24 Q. So is what was really going on, 25 Dr. Pesta, is the ultimate goal was to get to</p>
<p style="text-align: right;">Page 243</p> <p>1 no. I don't see why he would, though. 2 Q. Okay. And then he said, "To apply 3 for dbGaP access, a proposal is not needed. 4 For trajectories one might be." 5 So is that differentiating 6 controlled-access data from publicly available 7 data for dbGaP? 8 A. DbGaP. 9 Q. Yes. I'll do that next time. 10 A. I'm not sure what he's getting at 11 here. I mean, this was what, six years ago? 12 Let me read it real quick. 13 Q. Sure. 14 A. Now, what was the question? I'm 15 sorry. 16 Q. It was he seems to suggest that you 17 would not need an access proposal with 18 respect -- I'm actually adding. I'm trying to 19 understand at least what you understood, that 20 he was differentiating between getting to the 21 TCP data as opposed to some other publicly 22 available data for -- 23 A. I don't read it like that. 24 Q. You don't? Okay. You tell me. 25 A. I think this was an ambiguous</p>	<p style="text-align: right;">Page 245</p> <p>1 the ancestry data, and you could get that 2 assuming you had the TCP data whatever your 3 stated use purpose was? 4 A. When we met at Cleveland Pho, we 5 talked about various projects, and I agreed to 6 collaborate with him conditioned upon not every 7 application focusing on race. So I proposed 8 the sex difference study. He made the first 9 draft. We edited it and submitted it. 10 Q. But you'll agree with me that the 11 reference to "a sneaky way to get to the 12 ancestry information" isn't consistent with 13 trying to protect the sensitive nature of the 14 TCP data; would you agree? 15 MR. KELLY: Object to the form of 16 the question. 17 A. Those are two separate issues in my 18 mind, or can you repeat it? 19 Q. I'm actually focusing on the words 20 he uses. He says, "A sneaky way to request and 21 possibly present the ancestry x cognitive 22 outcome data," which doesn't seem to me to be 23 consistent with the sex differences that's 24 described earlier in the email. 25 MR. KELLY: Object to the form of</p>



<p style="text-align: right;">Page 246</p> <p>1 the question. Is there a question?</p> <p>2 Q. I'm asking if you agree with that</p> <p>3 or not.</p> <p>4 A. I don't know.</p> <p>5 MR. KELLY: Object to the form of</p> <p>6 the question.</p> <p>7 A. I don't know. I mean, we'd have to</p> <p>8 ask him. I read this six years ago. Either I</p> <p>9 missed that section, or I don't know, or maybe</p> <p>10 I thought -- I don't remember.</p> <p>11 Q. Right. Then in the upper part of</p> <p>12 the email he refers you to several different</p> <p>13 videos and on-line sources which appear, and</p> <p>14 you tell me if you looked at these steps to how</p> <p>15 to gain access to the control.</p> <p>16 A. Yeah. It was like an FIQ type</p> <p>17 video, I believe.</p> <p>18 Q. All right. All right. Then the</p> <p>19 next email, so let's go back one page, Friday,</p> <p>20 March 2nd.</p> <p>21 A. March 11th.</p> <p>22 Q. No, page 2.</p> <p>23 A. Got it. Sorry.</p> <p>24 Q. See it? Okay. This is in</p> <p>25 response, and you tell him essentially that it</p>	<p style="text-align: right;">Page 248</p> <p>1 remember how, but every email I guess from</p> <p>2 CSU's account is automatically forwarded to</p> <p>3 this CompuServe account.</p> <p>4 Q. So did you -- were these emails</p> <p>5 forwarded to your CS account?</p> <p>6 A. Yeah, because I had it</p> <p>7 automatically doing that. So every email I'd</p> <p>8 get from CSU was forwarded to CS.</p> <p>9 Q. I will tell you that we obtained</p> <p>10 these emails from your CSU email account.</p> <p>11 A. Understood.</p> <p>12 Q. We did not receive these emails in</p> <p>13 response to our document request. Did you do a</p> <p>14 search?</p> <p>15 A. From the cs.com account?</p> <p>16 Q. Well, we asked for all your</p> <p>17 communications with John Fuerst or any of your</p> <p>18 collaborators.</p> <p>19 A. I couldn't get inside CSU, I don't</p> <p>20 have access, so I searched CompuServe for John,</p> <p>21 Emil, and Jordan. I searched just their last</p> <p>22 names, and then I searched their email</p> <p>23 addresses, and then I searched their full name</p> <p>24 in quotes, and I don't know how long CompuServe</p> <p>25 keeps emails, but all I found is what I</p>
<p style="text-align: right;">Page 247</p> <p>1 will be a couple of days before you get back to</p> <p>2 him, right?</p> <p>3 A. Uh-huh.</p> <p>4 Q. And then you say, "Please note my</p> <p>5 preferred email address is bpesta22@csu.com,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. And that's your personal email</p> <p>9 address?</p> <p>10 A. Correct.</p> <p>11 Q. Did you want to do that because he</p> <p>12 was saying that he wanted to be sneaky and you</p> <p>13 didn't want it --</p> <p>14 A. No. I hate CSU's email system. I</p> <p>15 don't like Outlook. So if you see, you'll</p> <p>16 see -- when I got it -- whenever you see Bryan</p> <p>17 Pesta to Bryan Pesta, that's because I</p> <p>18 automatically forwarded CSU emails to my</p> <p>19 private email so I wouldn't have to deal with</p> <p>20 two email accounts.</p> <p>21 Q. Did you forward these emails to</p> <p>22 your private email account?</p> <p>23 A. Well, he sent it to me at CSU, and</p> <p>24 there is a script or something in Outlook or</p> <p>25 maybe, yeah, there is a way to do it, I don't</p>	<p style="text-align: right;">Page 249</p> <p>1 produced.</p> <p>2 Q. So were you using a web-based</p> <p>3 platform for your email?</p> <p>4 A. CompuServe. It's America Online</p> <p>5 basically.</p> <p>6 Q. And do you have the ability to tell</p> <p>7 it how long it should keep emails?</p> <p>8 A. Yeah.</p> <p>9 MR. KELLY: What was the question?</p> <p>10 (Record read.)</p> <p>11 Q. Did you have -- I'll repeat it. Do</p> <p>12 you have a setting on your or did you in 2018</p> <p>13 have a setting on your account to delete emails</p> <p>14 after a certain time?</p> <p>15 A. No. I think CompuServe does that.</p> <p>16 I know they don't store every single email you</p> <p>17 wrote. I even scrolled through -- I even</p> <p>18 searched my own email to see if there was some</p> <p>19 older stuff that would come up, and everything</p> <p>20 I found I produced.</p> <p>21 MS. GIFFEN: All right. Excuse me</p> <p>22 one second.</p> <p>23 (Brief recess.)</p> <p>24 Q. Dr. Pesta, when you did the search</p> <p>25 of your CompuServe -- is that it?</p>

<p style="text-align: right;">Page 250</p> <p>1 A. Correct.</p> <p>2 Q. -- account, did you include in your</p> <p>3 request or did you include in your search terms</p> <p>4 the names of the individuals if they would</p> <p>5 appear in the body of the email?</p> <p>6 A. Yes, and their emails and last name</p> <p>7 only.</p> <p>8 Q. Okay. All right. Then on</p> <p>9 March -- going back to the document on</p> <p>10 March 11th, you write to Bryan?</p> <p>11 A. John writes to me.</p> <p>12 Q. I'm sorry. No, it's you writing</p> <p>13 to --</p> <p>14 A. March 11th?</p> <p>15 Q. Yes, March 11th. Let's go back</p> <p>16 because we went through that whole deal. So</p> <p>17 let's go back to the document. We have just</p> <p>18 discussed the please note my preferred email</p> <p>19 address, and you give your cs.com email</p> <p>20 address, and then on March 11th you again write</p> <p>21 to John. I think that's what that says.</p> <p>22 A. Yeah, you're right. I</p> <p>23 misinterpreted it.</p> <p>24 Q. And you say, "Are you still in</p> <p>25 town?" And then you say, "I'll do this, but</p>	<p style="text-align: right;">Page 252</p> <p>1 A. Maybe the word collaborator I'm</p> <p>2 interpreting --</p> <p>3 Q. Hold on. Let me finish. What I'm</p> <p>4 interested in is the I'll do this part. What</p> <p>5 are you agreeing to do?</p> <p>6 A. I can only speculate. I mean, this</p> <p>7 is six years ago. I guess the issue is should</p> <p>8 we list Emil and Jordan as collaborators, but</p> <p>9 then since they weren't accessing the genetic</p> <p>10 data, we didn't have to.</p> <p>11 Q. If you go back to the first email,</p> <p>12 March 2nd --</p> <p>13 A. Okay.</p> <p>14 Q. -- he says he's talking about what</p> <p>15 data set to request to put together a proposal</p> <p>16 that would be sex differences in relation to</p> <p>17 brain differences, and he says he recommends</p> <p>18 looking at those web sites to find out more</p> <p>19 about how to get control access data.</p> <p>20 You say you're going to check -- on</p> <p>21 March 2nd you say, "I'm going to check this all</p> <p>22 out, but give me at least a few days. Please</p> <p>23 send me a reminder in a week if you haven't</p> <p>24 heard back from me about this."</p> <p>25 A. Okay.</p>
<p style="text-align: right;">Page 251</p> <p>1 what worries me is that it says all</p> <p>2 collaborators must also apply, Bryan."</p> <p>3 A. Yes.</p> <p>4 Q. What was the I'll do this? What</p> <p>5 were you referring to?</p> <p>6 A. So I think we had -- I mean, we</p> <p>7 weren't an expert on this, this was our first</p> <p>8 application, and we were confused whether your</p> <p>9 collaborators -- you brought this up about ten</p> <p>10 minutes ago, whether John would be a</p> <p>11 collaborator or not. So I don't know in</p> <p>12 specific response to this March 11th email, but</p> <p>13 we figured out that he's not a collaborator for</p> <p>14 TCP, but he was for ABCD because we</p> <p>15 added -- there is a reason for it that I can't</p> <p>16 remember, but there was a distinction between</p> <p>17 collaborator and --</p> <p>18 Q. I'm sorry. I don't think my</p> <p>19 question was clear.</p> <p>20 A. Okay.</p> <p>21 Q. Because your sentence is, "I'll do</p> <p>22 this, but what worries me is that it says all</p> <p>23 collaborators must also apply." And I</p> <p>24 understand your view that that's not true, not</p> <p>25 all collaborators must apply --</p>	<p style="text-align: right;">Page 253</p> <p>1 Q. Then you say use my cs.com address.</p> <p>2 A. Correct.</p> <p>3 Q. And then the next thing that</p> <p>4 happens is March 11th you say, "I'll do this."</p> <p>5 Is that I'll agree to do your proposal with</p> <p>6 respect to what we ask for in the data?</p> <p>7 A. Honestly, I don't remember.</p> <p>8 MR. KELLY: Object to the form of</p> <p>9 the question.</p> <p>10 A. It could have been.</p> <p>11 Q. Okay. All right.</p> <p>12 MR. KELLY: It's confusing.</p> <p>13 Q. Then the next email is his response</p> <p>14 also on March 11th. "Thanks for the email.</p> <p>15 Yes, I am still working with the Clinic." And</p> <p>16 that's one of my questions is because he's now</p> <p>17 referring to working with the Clinic, and</p> <p>18 that's not the subject of the earlier email</p> <p>19 trail.</p> <p>20 A. So implying that there is other</p> <p>21 emails?</p> <p>22 Q. Yes. Are there emails in between</p> <p>23 that went to just the cs.com address?</p> <p>24 A. Yes, but they didn't come up in the</p> <p>25 search. I think I did a pretty exhaustive</p>

<p style="text-align: right;">Page 254</p> <p>1 search and didn't find -- I don't think I found 2 very many older emails. 3 Q. Yes. We looked at what your 4 counsel provided, and there weren't very many 5 of those. 6 A. Yes. 7 Q. All right. In any event -- 8 A. Oh, can I add I also downloaded a 9 program that searches CompuServe email to maybe 10 find deleted ones, and it didn't produce 11 anything. 12 Q. Okay. All right. So there is 13 more. We don't need to get into his medical 14 issues, so I'll just ignore that. And then 15 John says, "If you could apply, I would 16 appreciate it. That would really help. We are 17 simultaneously working with David Becker for 18 him and Rindermann to gain access." 19 MR. KELLY: Where are you at, 20 counsel? 21 MS. GIFFEN: I am if you look at, 22 going backwards in time, this is the third page 23 of the document, and I'm reading an email to 24 Bryan from John dated March 11th, and it was -- 25 MR. KELLY: Actually the top of the</p>	<p style="text-align: right;">Page 256</p> <p>1 bottom email is for me to submit the formal 2 application. 3 Q. Okay. All right. "This process, 4 though, has been dragging on for months with no 5 end in site as apparently no one in Germany has 6 tried this before." Is Woodley in Germany? 7 A. I think he's in -- he's like 8 royalty in England or something. 9 Q. Really? What's his first name? 10 A. Michael Woodley of Menie or Menie, 11 M-E-N-I-E, I believe. But these other people 12 were university affiliated, so they were going 13 to get legitimate access. 14 Q. David Becker and Rindermann? 15 A. I don't really know Becker. 16 Q. How about Rindermann? 17 A. Heiner is his first name. He might 18 even be retired now. I'm not sure. 19 Q. Who was he with? 20 A. I don't know. I don't think it was 21 in America, or I'm not sure. 22 Q. John goes on to say, "In the 23 meantime, we would like the data to analyze. 24 How about this proposal? When you get access, 25 Emil and I will look at it and work out the</p>
<p style="text-align: right;">Page 255</p> <p>1 third page? 2 MS. GIFFEN: Correct. No, no, no, 3 no. 4 THE WITNESS: Third page from the 5 back, right? 6 MS. GIFFEN: Let's do this -- 7 MS. KAMINSKI: It's the fourth 8 page. 9 MS. GIFFEN: It's the fourth page. 10 THE WITNESS: From the front or the 11 back? 12 MS. KAMINSKI: From the front. 13 Q. So John says, "If you could apply, 14 I would appreciate it. That would really help. 15 We are simultaneously working with David Becker 16 for him and Rindermann to gain access and also 17 with another group through Woodley." 18 A. Uh-huh. 19 Q. Is that the same person that you 20 were on the research paper for earlier in your 21 career? 22 A. I'm not -- I don't think I've ever 23 published with him. I know him. I met him 24 once at a conference. But you jogged my memory 25 here. I think what he's asking for on the</p>	<p style="text-align: right;">Page 257</p> <p>1 code for analysis and variables, et cetera, 2 i.e., data exploration and cleaning. You won't 3 even need to send files as we can just remote 4 access your computer or one I could put 5 together for this purpose. If you are willing 6 to publish on the topic, e.g., the sex 7 difference proposal with hidden ancestry 8 analysis or a straight out ancestry analysis, 9 you will publish with Rindermann and Becker and 10 perhaps Emil, that is, only people who have 11 approved access. Emil's situation is tricky as 12 while he can get access through his company, he 13 has to be covert about where he works as shit 14 will hit the fan when reporters put two and two 15 together regarding the company's purposes." 16 So that's a whole lot. This raised 17 a whole bunch of questions. So, first, let's 18 take the last thing first. 19 A. Okay. 20 Q. Do you know anything about Emil's 21 situation is tricky about gaining access? 22 A. I know he worked for a genomic 23 company, like designer babies-type stuff, and I 24 don't know if he got permission to -- yeah, I 25 don't know, but that's what I think they are</p>

<p style="text-align: right;">Page 258</p> <p>1 referring to is his private sector job.</p> <p>2 Q. And this certainly seems to suggest</p> <p>3 that if Emil asked for access to the data, he</p> <p>4 may not get it because of whatever these issues</p> <p>5 are?</p> <p>6 A. Yeah, but he didn't need to because</p> <p>7 he only focused on --</p> <p>8 Q. I understand, but if he did, the</p> <p>9 concern is that he might not get it?</p> <p>10 A. The only way he would get it is if</p> <p>11 he registered for an independent study at CSU</p> <p>12 under my supervision.</p> <p>13 Q. And that would, under your theory</p> <p>14 and John's theory, if that's what he did, NIH</p> <p>15 need never know if he had access to the data,</p> <p>16 right?</p> <p>17 A. He didn't. Restricted access.</p> <p>18 Q. As long as you make somebody your</p> <p>19 research assistant, under your view of what the</p> <p>20 NIH rules would require, NIH would never need</p> <p>21 to know that that person who apparently has</p> <p>22 some sticky situation had access to the</p> <p>23 controlled data, right?</p> <p>24 A. But he didn't.</p> <p>25 Q. I know that that's what you</p>	<p style="text-align: right;">Page 260</p> <p>1 IQ, paper and pencil IQ test scores.</p> <p>2 Q. But I thought your computer didn't</p> <p>3 have internet access. How would they remote</p> <p>4 in?</p> <p>5 A. Well, I could have copied it to</p> <p>6 my -- I mean, here's my Newegg computer for</p> <p>7 this project. Right next to it was my</p> <p>8 laptop -- my desktop, so USB drive to my</p> <p>9 personal computer.</p> <p>10 Q. And at least it's a theoretical</p> <p>11 matter that could have happened with the</p> <p>12 controlled-access data, too. It just would</p> <p>13 have been inconsistent with --</p> <p>14 A. I don't know because those files</p> <p>15 are massive. I just don't think you could send</p> <p>16 it through CompuServe, you know, through any</p> <p>17 internet access.</p> <p>18 Q. Okay. All right. Then on</p> <p>19 March 11th, again, most of this is happening on</p> <p>20 March 11th.</p> <p>21 A. Okay.</p> <p>22 Q. You respond still trying to figure</p> <p>23 this all out. "But I know that the length of</p> <p>24 the specific study is broken, and a search</p> <p>25 seems to show that they took it off line. Can</p>
<p style="text-align: right;">Page 259</p> <p>1 steadfastly maintain, I believe.</p> <p>2 A. Okay.</p> <p>3 Q. But your theory on research, on the</p> <p>4 meaning of research assistant, is that would be</p> <p>5 the way that you would get somebody like Emil</p> <p>6 to get access to that data, right, without</p> <p>7 revealing who he was?</p> <p>8 A. No.</p> <p>9 MR. KELLY: Objection to the form</p> <p>10 of the question, mischaracterizes the</p> <p>11 testimony.</p> <p>12 A. No, I don't agree with that.</p> <p>13 Q. And this certainly proposes in this</p> <p>14 email that both John and Emil will look at it,</p> <p>15 right, and analyze the variables?</p> <p>16 A. I think they are talking about the</p> <p>17 extraction process. So you have to get it from</p> <p>18 the NIH format into like a spreadsheet.</p> <p>19 Q. And they are discussing remoting</p> <p>20 access into your computer, right?</p> <p>21 A. That didn't happen. It might have</p> <p>22 happened for like the phenotypic data, but I</p> <p>23 don't remember.</p> <p>24 Q. The what data?</p> <p>25 A. The non-restricted acces, like the</p>	<p style="text-align: right;">Page 261</p> <p>1 you confirm?" And the last sentence is, "Also</p> <p>2 I mentioned I'm not a geneticist. Can you link</p> <p>3 to one or two good primer articles that might</p> <p>4 get me up to speed on how the study might run?"</p> <p>5 Yes?</p> <p>6 A. That's what it says, correct.</p> <p>7 Q. Okay. Then the next part of the</p> <p>8 thread is March, again, more March 11th.</p> <p>9 A. Uh-huh, bottom of the next page,</p> <p>10 right.</p> <p>11 Q. Correct. That's the beginning, the</p> <p>12 bottom of the next page. This is from John</p> <p>13 responding, and he refers you -- first of all,</p> <p>14 he says, "There are a couple of databases that</p> <p>15 do not require an IRB. Ideally (which is still</p> <p>16 up)," and then he sites to it, and then the</p> <p>17 first thing that he comes up with is the TCP,</p> <p>18 right?</p> <p>19 A. Correct.</p> <p>20 Q. Then he says, "You would not need</p> <p>21 to do the analyses."</p> <p>22 A. Where? I'm sorry. Going up?</p> <p>23 Q. Yeah, on the very next page, right.</p> <p>24 MR. KELLY: Going down to the next</p> <p>25 page.</p>

<p style="text-align: right;">Page 262</p> <p>1 A. Sorry.</p> <p>2 Q. He says, "You would not need to do</p> <p>3 the analyses unless you wish to, though it</p> <p>4 would be a good idea for you to know what is</p> <p>5 being done of course. A straight out -- "</p> <p>6 Is this a suggestion that you</p> <p>7 wouldn't really have to be involved or</p> <p>8 understand what was happening with the</p> <p>9 analysis?</p> <p>10 A. No. I didn't do the PGS. I since</p> <p>11 know how to do it, I think, but John had the</p> <p>12 genetics expertise.</p> <p>13 Q. Okay. "A straight out global</p> <p>14 admixture analysis would run like one of the</p> <p>15 scores of global ancestry x medical outcomes</p> <p>16 SES analyses we reviewed on the global ancestry</p> <p>17 x cognitive ability one we previously</p> <p>18 conducted. The aim is to replicate previous</p> <p>19 results using a much larger sample." And then</p> <p>20 there is references to papers, I guess?</p> <p>21 A. Yeah, I guess. I don't know.</p> <p>22 Q. Did you look at them?</p> <p>23 A. I'm sure I did like six years ago.</p> <p>24 Q. Did you in any of the statements of</p> <p>25 purpose in the DAR refer to an intention to</p>	<p style="text-align: right;">Page 264</p> <p>1 But did I specifically click on these links and</p> <p>2 read it? I don't know.</p> <p>3 Q. Then he says, "This would just</p> <p>4 involve adding and switching covarieties."</p> <p>5 What does that mean?</p> <p>6 MR. KELLY: Covariates I believe is</p> <p>7 what it is.</p> <p>8 A. It's more strategic on how to do</p> <p>9 the analysis, like big picture.</p> <p>10 Q. Covariates?</p> <p>11 A. Covariates</p> <p>12 MR. KELLY: It's covariates.</p> <p>13 Q. He said, "Regardless, we want to</p> <p>14 start by replicating the ancestry and IQ</p> <p>15 findings," right?</p> <p>16 A. For what became 19747.</p> <p>17 Q. But this entire conversation is</p> <p>18 before you got the sex differences DAR file,</p> <p>19 right?</p> <p>20 A. When we met at Pho, we agreed first</p> <p>21 to do sex differences and then to do I think it</p> <p>22 was either mental health or, what's the other</p> <p>23 one, transethnic validity. So we agreed to do</p> <p>24 all three of those or that we would submit</p> <p>25 applications for all three.</p>
<p style="text-align: right;">Page 263</p> <p>1 replicate those articles, those papers?</p> <p>2 A. Well, I don't know what the papers</p> <p>3 are. I've just got the links here. Let me</p> <p>4 see. I don't know. Yeah, I mean, I'm sure I</p> <p>5 looked at the links back then, but I don't</p> <p>6 remember. Can you repeat the question?</p> <p>7 Q. The question was, did you refer in</p> <p>8 your purpose statements for the DARs to an</p> <p>9 intention to replicate those studies?</p> <p>10 A. I think we did mention Lee, et al.,</p> <p>11 but I don't see that here.</p> <p>12 Q. And then he says, "In addition</p> <p>13 there are multiple other possible analyses, for</p> <p>14 example, as noted the relation between brain</p> <p>15 size, sex, and IQ controlling for population</p> <p>16 structure which would work something like</p> <p>17 this," and then he cites more papers, right?</p> <p>18 A. Yeah. That's for the 18070.</p> <p>19 Q. And, I'm sorry, you may have</p> <p>20 answered this, but I don't remember what you</p> <p>21 said. Did you look at each of those papers</p> <p>22 when you got this email?</p> <p>23 A. I presume I did. I mean, I wanted</p> <p>24 to learn -- get up to speed on how genetic</p> <p>25 research works, and I did invest time into it.</p>	<p style="text-align: right;">Page 265</p> <p>1 Q. He started off in the very first</p> <p>2 email saying what he really wants is the</p> <p>3 ancestry and IQ.</p> <p>4 A. For sure, yes.</p> <p>5 Q. And he uses the phrase, "It's a</p> <p>6 sneaky way to get the data," and he is coming</p> <p>7 back to the same thing now. Did it concern you</p> <p>8 that it appeared based on this email trail that</p> <p>9 the guy is interested in one topic, and he's</p> <p>10 trying to figure out every way to get the data</p> <p>11 supporting that particular purpose and that</p> <p>12 particular data set?</p> <p>13 A. No, I don't agree. I think the</p> <p>14 first thing I said, you know, and I already</p> <p>15 testified to this, but I'll agree to</p> <p>16 collaborate with you on the race IQ stuff, but</p> <p>17 I don't want to apply -- I don't want that to</p> <p>18 be the only thing we do. So we agreed to do</p> <p>19 the sex differences thing. At Cleveland Pho we</p> <p>20 agreed to do the other two, too, mental health</p> <p>21 and then the transethnic validity one.</p> <p>22 Q. All right. The beginning of that</p> <p>23 email that we just described that I skipped</p> <p>24 over quickly says, "There are a couple of</p> <p>25 databases that do not require an IRB." Why was</p>



<p style="text-align: right;">Page 266</p> <p>1 it so important to avoid IRB?</p> <p>2 A. Hassle.</p> <p>3 Q. What's the hassle?</p> <p>4 A. Submitting a proposal to the CSU</p> <p>5 IRB, waiting.</p> <p>6 Q. Because they might say no?</p> <p>7 A. No. It's just a hassle. I mean,</p> <p>8 it's more convenient to get data sets where</p> <p>9 it's not required, and also this particular</p> <p>10 data set, TCP, had a lot of what we were</p> <p>11 looking at doing which is controlling social</p> <p>12 race versus genetic ancestry.</p> <p>13 Q. All right. Then there is some</p> <p>14 discussion, and I'm now on the second page of</p> <p>15 the document, about logistics. "Who do you</p> <p>16 need at the university to be a signatory for</p> <p>17 the application to NIH?" And at the very top</p> <p>18 there is an email from John to you dated</p> <p>19 March 22nd, so we've now jumped forward 11 days</p> <p>20 or so. "Hi Bryan. Unfortunately I will be in</p> <p>21 town for a bit since I have to wait for some</p> <p>22 new appointments. I can't stand the weather</p> <p>23 here. My plan now is to go back to Raleigh by</p> <p>24 the summer so at least until early June unless</p> <p>25 something changes."</p>	<p style="text-align: right;">Page 268</p> <p>1 Q. Did you review any seminars that</p> <p>2 CSU has about NIH proposals?</p> <p>3 A. That specifically CSU has I don't</p> <p>4 remember.</p> <p>5 Q. Did you look for them?</p> <p>6 A. I looked for NIH stuff because it's</p> <p>7 the NIH's data.</p> <p>8 Q. Meaning?</p> <p>9 A. So those prior links we talked</p> <p>10 about.</p> <p>11 Q. But did you look for anything at</p> <p>12 CSU with respect to that?</p> <p>13 A. I did do research on how to apply</p> <p>14 for NIH data. Whether I looked at CSU or not I</p> <p>15 don't remember.</p> <p>16 Q. Okay. John was not yet your</p> <p>17 research assistant at this time, correct?</p> <p>18 A. No.</p> <p>19 Q. Yet he's telling you what the</p> <p>20 office of research needs at CSU. Does that</p> <p>21 make sense to you?</p> <p>22 A. Not really. He's suggesting that I</p> <p>23 look into that so that I get a better sense of</p> <p>24 how to accurately apply for the data.</p> <p>25 Q. All right. Then the very first</p>
<p style="text-align: right;">Page 267</p> <p>1 So he was living in the Cleveland</p> <p>2 area at the time?</p> <p>3 A. Yeah, and that's how we were able</p> <p>4 to meet at Cleveland Pho.</p> <p>5 Q. Because he went to Cleveland State</p> <p>6 for a period of time. Was he a resident of</p> <p>7 this area back in the early 2000s when he was</p> <p>8 taking courses at Cleveland State?</p> <p>9 A. I know his parents -- he lived in</p> <p>10 his parents' house which is east side</p> <p>11 somewhere.</p> <p>12 Q. Okay. And then he suggests that</p> <p>13 you call the office of research, and he gives</p> <p>14 you the telephone number.</p> <p>15 A. That's Dr. Ward's office, I</p> <p>16 believe.</p> <p>17 Q. Pardon me?</p> <p>18 A. That's Dr. Ward's office.</p> <p>19 Q. "CSU has seminars on NIH proposal</p> <p>20 writing, so there must be a designated person."</p> <p>21 Did you look at the seminars and</p> <p>22 proposal writing at the time in 2018?</p> <p>23 A. Yeah. I think it's MaryTherese</p> <p>24 Kocevar who was the contact person that John</p> <p>25 was talking about here.</p>	<p style="text-align: right;">Page 269</p> <p>1 page of this document is a whole lot of when</p> <p>2 are you going to be back in town, here is the</p> <p>3 NIH coordinator number, so a lot of logistics</p> <p>4 stuff.</p> <p>5 A. Correct.</p> <p>6 Q. This was really I think the first</p> <p>7 email that we found around, and you'll know</p> <p>8 better than I would, around your communications</p> <p>9 with Fuerst or the other collaborators about</p> <p>10 the project that was to come. Are you aware of</p> <p>11 anything before this?</p> <p>12 A. You mean this whole packet is the</p> <p>13 first that you found, this whole exhibit?</p> <p>14 Q. Yes, I think so.</p> <p>15 A. Yeah, so --</p> <p>16 Q. But I'm not going to profess to</p> <p>17 know, so that's why I'm asking you.</p> <p>18 A. Okay. So the first email, does it</p> <p>19 say? "Nice meeting you at Pho." So I presume</p> <p>20 we met at Pho on March 1st, 2018. That's when</p> <p>21 we agreed to apply for three different topics.</p> <p>22 - - - - -</p> <p>23 (Thereupon, Deposition Exhibit 36,</p> <p>24 an Email String, was marked for</p> <p>25 purposes of identification.)</p>

<p style="text-align: right;">Page 270</p> <p>1       - - - - -</p> <p>2       Q. All right. This is, and let's do</p> <p>3 the same thing we did with the other one.</p> <p>4       A. Okay.</p> <p>5       Q. Because this was April -- the first</p> <p>6 one is April 8th which I think is after the</p> <p>7 email thread we were just looking at.</p> <p>8       A. In Exhibit 35, correct.</p> <p>9       Q. Okay. And this is an email from</p> <p>10 Mary Jane Karpinski to you. Who is Mary Jane</p> <p>11 Karpinski? I'm sorry. I am totally wrong.</p> <p>12 That is not the first email.</p> <p>13       A. Okay.</p> <p>14       Q. The first email is from you to</p> <p>15 Sponsored Programs and Research Services and</p> <p>16 Mary Jane Karpinski, right?</p> <p>17       A. Correct.</p> <p>18       Q. April 8th. Tell me now who Mary</p> <p>19 Jane Karpinski is.</p> <p>20       A. So I did remember MaryTherese</p> <p>21 Kocevar was one of the coordinators for getting</p> <p>22 CSU approval for the applications. I think</p> <p>23 Karpinski was another, but I'm not positive.</p> <p>24       Q. In this email you're asking her for</p> <p>25 information about the signing officer, right?</p>	<p style="text-align: right;">Page 272</p> <p>1       Q. At least these are instructions of</p> <p>2 how you're supposed to do it?</p> <p>3       A. Okay. Yes.</p> <p>4       Q. You agree with that?</p> <p>5       A. Yes.</p> <p>6       Q. And then you tell John on April 9th</p> <p>7 that you're making some progress, see below,</p> <p>8 and you send him the email trail that you had</p> <p>9 with the CSU people from the Office of</p> <p>10 Research, right?</p> <p>11       A. Correct.</p> <p>12       Q. And then on April 9th, John tells</p> <p>13 you --</p> <p>14       A. That's got to be good to hear.</p> <p>15       Q. Pardon me?</p> <p>16       A. I think it's good to hear. It's a</p> <p>17 typo.</p> <p>18       Q. Oh, I see. I wasn't focused on</p> <p>19 that at all. All right. What does the next</p> <p>20 sentence mean? "We are at about 140 M here,"</p> <p>21 and then there is a Youtube reference.</p> <p>22       A. Yeah. I would have to click on the</p> <p>23 link to refresh my memory.</p> <p>24       Q. And he says, "You'll have to select</p> <p>25 the survey that you're applying for which is</p>
<p style="text-align: right;">Page 271</p> <p>1       A. Correct.</p> <p>2       Q. This is really taking action on the</p> <p>3 email thread we just looked at in Exhibit 35,</p> <p>4 the first task of which was find out who the</p> <p>5 signing officer is, right?</p> <p>6       A. Sounds correct, yes.</p> <p>7       Q. Okay. And she copies Lisa Franklin</p> <p>8 on your email, right?</p> <p>9       A. Correct.</p> <p>10       Q. And who is Lisa Franklin?</p> <p>11       A. I think she's -- like it was a</p> <p>12 clerical thing. She's like the gateway to the</p> <p>13 people who approve it. I'm not positive.</p> <p>14       Q. All right.</p> <p>15       A. Does it say her title? It does</p> <p>16 not. Okay. No, it does. She's assistant</p> <p>17 director.</p> <p>18       Q. Yes. Then on the next page, and we</p> <p>19 don't have to go through these piece by piece</p> <p>20 unless you would prefer to, it appears that the</p> <p>21 Office of Research is setting you up with an</p> <p>22 account that you can then use to make the</p> <p>23 application to NIH, right?</p> <p>24       A. I thought I created the account, so</p> <p>25 I'm not sure.</p>	<p style="text-align: right;">Page 273</p> <p>1 the TCP. This does not require IRB approval."</p> <p>2 He says that again. "So we will be able to</p> <p>3 skip that step." And then he says, "Yeah,</p> <p>4 we'll meet," right?</p> <p>5       A. Correct.</p> <p>6       Q. So was he also looking at that?</p> <p>7 Well, we don't know because we don't know what</p> <p>8 the Youtube --</p> <p>9       A. Looking at what, the link?</p> <p>10       Q. The Youtube.</p> <p>11       A. Well, he sent it, so I presume he</p> <p>12 looked at it.</p> <p>13       Q. Do you remember whether you looked</p> <p>14 at it?</p> <p>15       A. I'm sure I did. I just have no</p> <p>16 memory of specifically doing it.</p> <p>17       Q. Then the next email is April 10th</p> <p>18 from you to John. "John, you sent me a summary</p> <p>19 abstract a while ago. Should I be using that</p> <p>20 when I apply? Also, what kind of food do you</p> <p>21 like?" And you go on to talk about lunching</p> <p>22 with him.</p> <p>23       What was the summary abstract that</p> <p>24 you're referring to?</p> <p>25       A. Well, I can only speculate. I</p>

<p style="text-align: right;">Page 274</p> <p>1 don't remember.</p> <p>2 MR. KELLY: Don't speculate.</p> <p>3 THE WITNESS: Okay. Thank you.</p> <p>4 Q. You don't know what summary</p> <p>5 abstract it was?</p> <p>6 A. No.</p> <p>7 Q. It certainly sounds like he took</p> <p>8 the first crack at the summary abstract that</p> <p>9 was going to go with the DAR, right?</p> <p>10 A. He did draft the first. I don't</p> <p>11 know if it's called a summary abstract, because</p> <p>12 there is a technical statement then and the</p> <p>13 non. That's why I'm not going to speculate.</p> <p>14 Q. What you're referring to is what's</p> <p>15 in what we've been calling the RUS?</p> <p>16 A. Right.</p> <p>17 Q. Which is the --</p> <p>18 A. Research user --</p> <p>19 Q. Statement, I think. In fact, we</p> <p>20 are about to come up with the RUS reference in</p> <p>21 one second. John replies also on April 10th,</p> <p>22 "Hi Bryan, I'm not sure they will require one</p> <p>23 to be submitted. In case they did, I propose</p> <p>24 the attached. If you are comfortable with</p> <p>25 publishing such a table (and reporting the</p>	<p style="text-align: right;">Page 276</p> <p>1 didn't find any emails relating to the sex</p> <p>2 differences DAR. The focus appears to be on</p> <p>3 the --</p> <p>4 A. Yes. In this packet I agree.</p> <p>5 Q. Okay. And I note that the 1909 DAR</p> <p>6 does not refer directly to IQ and ancestry;</p> <p>7 does it?</p> <p>8 A. 19090?</p> <p>9 Q. Right.</p> <p>10 A. That's the mental health one except</p> <p>11 for that one indirect thing that I pointed out</p> <p>12 to you in the morning.</p> <p>13 Q. Right. And the one that does refer</p> <p>14 to IQ and race or ancestry doesn't get filed</p> <p>15 until June of 2019, more than a year after this</p> <p>16 email discussion, right?</p> <p>17 MR. KELLY: Object.</p> <p>18 THE WITNESS: Pardon me?</p> <p>19 MR. KELLY: It mischaracterizes the</p> <p>20 testimony. I don't believe it's accurate,</p> <p>21 Ms. Giffen, with all due respect.</p> <p>22 Q. Your counsel is right.</p> <p>23 A. Okay.</p> <p>24 Q. September of 2018.</p> <p>25 A. We're going to have to backtrack</p>
<p style="text-align: right;">Page 275</p> <p>1 admixture results in a table in the</p> <p>2 supplementary file), then I say we go with it.</p> <p>3 If not, I can come up with something else," and</p> <p>4 then he makes reference to having lunch.</p> <p>5 Now, we don't have whatever, if</p> <p>6 there was ever anything attached, because it</p> <p>7 didn't appear to us that there was something</p> <p>8 attached. So did you receive something from</p> <p>9 him, the proposal about what should be</p> <p>10 contained with it?</p> <p>11 A. I'm not sure. This is obviously</p> <p>12 for the race and IQ, 19747, but I don't</p> <p>13 remember what he's getting at here.</p> <p>14 Q. But the race and IQ --</p> <p>15 A. Was submitted.</p> <p>16 Q. -- DAR is not submitted until?</p> <p>17 A. July?</p> <p>18 Q. Let's see. We can use your</p> <p>19 Table 1. It's not submitted until July. The</p> <p>20 one that is submitted first is April 12th, and</p> <p>21 that's the sex differences.</p> <p>22 A. That was our plan, correct. We</p> <p>23 both liked to work linearly on one project as</p> <p>24 opposed to doing multiple ones at a time.</p> <p>25 Q. All right. I'll tell you that we</p>	<p style="text-align: right;">Page 277</p> <p>1 and repeat the question. Sorry.</p> <p>2 Q. That's all right. I'll withdraw</p> <p>3 it.</p> <p>4 Then in the first email dated</p> <p>5 April 11th, it's, "Hi John," there is more</p> <p>6 references to when you're going to lunch. "I'm</p> <p>7 making good progress on the application.</p> <p>8 However, I'm stuck on this part," and then you</p> <p>9 refer to the RUS, and I assume what you've done</p> <p>10 there is you've cut and pasted the instructions</p> <p>11 from the application on the NIH site for the</p> <p>12 DAR; is that right?</p> <p>13 A. I'm not really following that.</p> <p>14 Q. Here's what the paragraph says.</p> <p>15 "Please enter your RUS in the area below. The</p> <p>16 RUS should be one or two paragraphs in length</p> <p>17 and include research objectives, the study</p> <p>18 design, and an analysis plan including the</p> <p>19 phenotypic characteristics that will be tested</p> <p>20 for association with genetic variance. If</p> <p>21 you're requesting multiple databases, please</p> <p>22 describe how you will use them. Examples of</p> <p>23 RUS can be found at," and then there is a</p> <p>24 reference.</p> <p>25 So that appears to be from the NIH</p>

<p style="text-align: right;">Page 278</p> <p>1 website where you're making the DAR, and you've 2 got to put in the RUS data? 3 MR. KELLY: Object to the form of 4 the question. 5 Q. What are you referring to there? 6 A. My concern or confusion is that I'm 7 not sure which application of the three this is 8 for. 9 Q. Okay. So how does that change 10 where you got that paragraph? 11 A. I don't know where I got it. 12 Probably from the NIH. 13 Q. Then you bold this, "I'm requesting 14 permission to use cloud computing to carry out 15 the research that's described in my research 16 use statement." And then there is a 17 non-technical summary, and is this you asking 18 what is a non-technical summary, or is that 19 again from the NIH website? 20 MR. KELLY: If you know. 21 A. I don't know. 22 Q. And you say, "It seems like your 23 summary is for the" -- by the way, all of the 24 questions I'm asking you are only if you know, 25 and if you don't know, feel free to tell me</p>	<p style="text-align: right;">Page 280</p> <p>1 between you and John Fuerst beginning, and I 2 apologize, but we only have to look at a tiny 3 piece of this. 4 A. Okay. 5 Q. Because if you look at Wednesday, 6 April 11th, which is the third email from the 7 first page -- 8 A. Okay. 9 Q. -- that actually is a continuation 10 of what we just looked at in Exhibit 36, and if 11 you need to satisfy yourself with respect to 12 that, feel free to do so. 13 A. Okay. 14 Q. This appears to me to be a 15 continuation of that conversation later in 16 time. 17 A. I would agree with that. 18 Q. Okay. So John writes on 19 April 11th, "As for the RUS, are you 20 okay" -- let me make sure that this is making 21 sense. 22 MR. KELLY: Good luck. 23 Q. They are all April 11th. Back to 24 Exhibit 37. So this second email on the first 25 page says from John to you, again, you're</p>
<p style="text-align: right;">Page 279</p> <p>1 that. 2 A. Thank you. 3 MR. KELLY: Don't speculate and say 4 well -- 5 Q. "It seems like your summary is for 6 the RUS, but we need something toned down for 7 the non-technical summary. Could you draft 8 this?" 9 And then finally, "In the RUS you 10 attached, should the word brain appear in line 11 four before the words size volume." Does that 12 refresh your recollection about what -- 13 A. It's the sex one for sure. 14 Q. It's the sex differences one. So 15 this discussion is about the 18007 project, 16 right? 17 A. Yes. 18 - - - - - 19 (Thereupon, Deposition Exhibit 37, 20 an Email String, was marked for 21 purposes of identification.) 22 - - - - - 23 Q. Handing you what's been marked as 24 Exhibit 37, and this appears to be an email 25 from you -- actually, it's an email trail</p>	<p style="text-align: right;">Page 281</p> <p>1 talking about lunch. "As for the RUS, are you 2 okay with my plan (according to which we look 3 at the sex times G times brain size association 4 and include population structure as a control 5 and note the PC1 ancestry times IQ associations 6 in the supplementary file)? This is a safe 7 analysis. If so, I will write up a simple 8 summary and note the variables needed. 9 Otherwise, I can come up with something else." 10 What was that about? 11 A. This is for the sex difference one. 12 Q. Okay. 13 A. I don't remember him talking 14 about -- I don't remember this email, but -- I 15 don't remember. 16 Q. But he's clearly talking about 17 writing in such a way that you can get the 18 ancestry and IQ associations in a supplementary 19 file, right? 20 A. Well, we applied for it later on in 21 19747, but it could be a big picture thing. 22 Q. Okay. And then you write later to 23 John, "Excellent for the strategy and for noon 24 on Tuesday." 25 A. Okay.</p>

<p style="text-align: right;">Page 282</p> <p>1 Q. But as you sit here today, you're</p> <p>2 unsure exactly how the strategy was to work?</p> <p>3 A. No. We agreed to do at Cleveland</p> <p>4 Pho the three projects. We wanted to start</p> <p>5 with sex differences. I don't think we picked,</p> <p>6 prioritized mental health over the transethnic</p> <p>7 validity one. So we were going to start with</p> <p>8 sex, see what happened, but also work on the</p> <p>9 applications, writing it out for the other two.</p> <p>10 Q. But his focus in all of these</p> <p>11 emails is I need to get the ancestry and IQ</p> <p>12 data, right?</p> <p>13 A. The reason he wanted to meet me at</p> <p>14 Pho is because he wanted primarily to do that</p> <p>15 study.</p> <p>16 Q. Right. So whatever was on the</p> <p>17 DARs, he was most interested in how do we get</p> <p>18 the data so we can do that extra analysis,</p> <p>19 right?</p> <p>20 A. Yeah, as listed in 19747.</p> <p>21 Q. Okay. All right.</p> <p>22 - - - - -</p> <p>23 (Thereupon, Deposition Exhibit 38,</p> <p>24 an Email String, was marked for</p> <p>25 purposes of identification.)</p>	<p style="text-align: right;">Page 284</p> <p>1 are still useful because they allow us to</p> <p>2 validate our beliefs privately which is useful</p> <p>3 because it will tell us how confident one can</p> <p>4 push ideas in other papers."</p> <p>5 A. That is not the way I write. It</p> <p>6 sounds like something Emil would say.</p> <p>7 Q. You didn't write it. This is to --</p> <p>8 MR. KELLY: It's from --</p> <p>9 Q. It's to you from Emil.</p> <p>10 MR. KELLY: Yeah.</p> <p>11 A. Yeah.</p> <p>12 Q. And Kerin just pointed out there is</p> <p>13 actually an email before that.</p> <p>14 A. Okay.</p> <p>15 Q. The very first email appears to be</p> <p>16 from you to John and Emil saying, "The deed is</p> <p>17 done."</p> <p>18 A. That would be an application</p> <p>19 submitted, probably sex.</p> <p>20 Q. Yeah, because this is an email</p> <p>21 dated April 12th, and it won't surprise you if</p> <p>22 we look back that the sex differences was</p> <p>23 submitted on April 12th?</p> <p>24 A. That makes sense.</p> <p>25 Q. So "the deed is done" refers to</p>
<p style="text-align: right;">Page 283</p> <p>1 - - - - -</p> <p>2 Q. Handing you what's been marked as</p> <p>3 Exhibit 38, this appears to be more</p> <p>4 communications now, but this time Emil is part</p> <p>5 of the conversation, right?</p> <p>6 A. On the top.</p> <p>7 MR. KELLY: Is this 38?</p> <p>8 THE WITNESS: This is 38.</p> <p>9 Q. This is a one pager, so look all</p> <p>10 the way at the bottom. Are you with me?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. The first email is Thursday,</p> <p>13 April 12th, and it's from Emil to you with a cc</p> <p>14 to John, right?</p> <p>15 A. Yes.</p> <p>16 Q. It says, "Bryan, cool. We may want</p> <p>17 to send some applications to other samples as</p> <p>18 soon as possible to see how difficult the IRB</p> <p>19 is to get. I reckon that if we mask the nature</p> <p>20 of the study with usual medical terms, one</p> <p>21 can't get away with a lot."</p> <p>22 A. One can.</p> <p>23 Q. "One can get away with a lot."</p> <p>24 Thank you. "Getting samples for analyses that</p> <p>25 one doesn't publish to preserve your reputation</p>	<p style="text-align: right;">Page 285</p> <p>1 that. But the email's response or Emil's</p> <p>2 response to that refers to "masking the nature</p> <p>3 of the study and publishing something but</p> <p>4 validating beliefs privately."</p> <p>5 A. Yeah. So this has to be about the</p> <p>6 sex differences one because, I mean, it's in</p> <p>7 the chain. I don't know what he was getting at</p> <p>8 there.</p> <p>9 Q. So with this language employed by</p> <p>10 Emil with respect to access to the data and</p> <p>11 John Fuerst's earlier references to sneaky ways</p> <p>12 to get at things, why weren't you concerned</p> <p>13 about the real objectives of these fellows to</p> <p>14 do the research that you were telling NIH that</p> <p>15 you were doing?</p> <p>16 MR. KELLY: Objection to the form</p> <p>17 of the question, mischaracterizes his</p> <p>18 testimony.</p> <p>19 A. Because we wanted to do the sex</p> <p>20 difference one first. But, yeah, John and Emil</p> <p>21 were most interested in 19747.</p> <p>22 Q. And they are talking about hiding,</p> <p>23 right?</p> <p>24 A. Nothing was hidden.</p> <p>25 Q. Well, at least their intention in</p>



<p style="text-align: right;">Page 286</p> <p>1 what they were going to do with the data, 2 because it's the same data set, right, TCP is 3 the same data set? 4 A. Correct. 5 Q. So what they wanted to do with the 6 TCP data set in these email trails that we've 7 been looking at seem to be inconsistent with 8 the only application that was at that point 9 made to NIH? 10 MR. KELLY: Object to the form of 11 the question. That is mischaracterizing the 12 testimony. 13 A. No. We had every intention to do 14 the race IQ paper, right, but I told John I 15 want to do something else first. 16 Q. Why? 17 A. Because I told him this, and I 18 think it's even in the final report of the 19 binder, I don't want -- I didn't at that time 20 want every line in my vita to be on this topic, 21 plus I'm interested in sex differences. I even 22 have a paper on it. 23 Q. But you didn't do anything with 24 that data on sex differences? 25 A. I didn't even access it because the</p>	<p style="text-align: right;">Page 288</p> <p>1 A. Where? I don't see where we're at. 2 Q. Right in the middle of the page. 3 On April 12th you respond to Emil saying, "Good 4 idea. Do we wait for any feedback on this one 5 or just march on? I would obviously need you 6 guys to do the write-ups again." 7 A. Okay. 8 Q. So you were saying good idea, Emil, 9 to mask the nature of the study? 10 A. No. I think I was talking about 11 the timing of doing sex differences first. So 12 we were -- you know, we were planning to do all 13 three of the studies. So even though we 14 focused first on sex differences, we did work a 15 little bit on the applications for the other 16 ones. 17 Q. Emil responds to that email again 18 in the middle of the page. He's now referring 19 to the TCP data set, I believe. 20 A. Correct. 21 Q. And he refers you to the full data 22 dictionary, and he says, "So one will be able 23 to control for parental education, lead 24 exposure, age, sex, self-perceived race, and 25 then (dummies)." What does that mean?</p>
<p style="text-align: right;">Page 287</p> <p>1 brain imaging files were massive and not 2 processed. So you could convert them to like a 3 jpeg. No idea how to do that. 4 Q. Isn't it true that whatever your 5 intention was with respect to the data requests 6 to NIH, you wanted to do the three, right? 7 A. Uh-huh. 8 Q. The only paper that came out of the 9 TCP data was the paper they are talking about 10 in these emails, right? 11 MR. KELLY: Object to the form of 12 the question. That's -- 13 A. And the paper didn't exist 14 obviously here. 15 Q. I know. 16 A. No. Well, we didn't even download 17 the data for sex for the reason I just gave 18 you. I don't know why we didn't pursue the 19 mental health stuff next. We went to -- yeah, 20 you're right. We got -- the only paper that 21 came from all this is the Lasker paper. 22 Q. You write back to Emil when he said 23 we can mask the nature of the study and you can 24 do private research and then publish something 25 different, "Good idea."</p>	<p style="text-align: right;">Page 289</p> <p>1 A. It's a statistical technique where 2 the nature of the data are words, black, white, 3 so you need to put numbers to those to run the 4 data. So zero might be all Africans, and one 5 would be whites. It's called dummy coding. 6 Q. I get it. It's not dummies in the 7 common sense of the word. 8 A. No. 9 Q. Then he says, "One can predict skin 10 tone from the genetic data with high accuracy, 11 I think." Again, his focus on the TCP being 12 skin tone. 13 A. Yeah. That's for 19747. That's 14 the HIRisPlex website, I think. It's just 15 H-I-R-I-S, and P-L-E-X. 16 Q. By the way, you mention that, and I 17 should have asked you this earlier, you mention 18 that NIH had approved the use of HIRisPlex? 19 A. For another article. 20 Q. What article is that? 21 A. It was published in Nature. It's 22 in -- probably several times in the final 23 report. 24 MS. GIFFEN: Do we have that, Paul? 25 MR. NEEL: The article?</p>

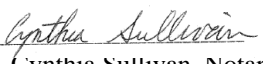
<p style="text-align: right;">Page 290</p> <p>1 MS. GIFFEN: Or reference so we can 2 find it. 3 THE WITNESS: It would be in one of 4 my rebuttals. 5 Q. If we don't have it, we'll get back 6 to it. 7 MR. KELLY: The hyperlinks are 8 there I'm pretty sure. 9 MS. GIFFEN: Oh, of what you sent. 10 Maybe that's what we need to do. 11 MR. KELLY: I think it's in the 12 final report, the hyperlinks to it. 13 MS. GIFFEN: Okay. 14 Q. All right. And then the email 15 second to the top says, "Bryan, what type of 16 papers are you comfortable doing?" I'm sorry. 17 This is from John, and the email is to you, 18 Emil and to you. "I would like to go through 19 all the samples and compute the correlations 20 between SES and ancestry to add to the genetic 21 ancestry x SES metaanalysis. A number of 22 research teams told me to do just this. Would 23 you be willing to apply on these grounds or 24 even apply on grounds to look at IQ and genetic 25 ancestry correlations?" And then there is a</p>	<p style="text-align: right;">Page 292</p> <p>1 A. Yeah. The forwarding, I guess. I 2 don't know. I mean, I prefer to use the CS 3 email for everything, but you're right, so I 4 was wrong there. 5 - - - - - 6 (Thereupon, Deposition Exhibit 39, 7 an Email String, was marked for 8 purposes of identification.) 9 - - - - - 10 A. Okay. 11 Q. There is several -- again, this is 12 going from back to front. The first page is an 13 email from Emil to you and John suggesting that 14 you look at registered reports. What does that 15 refer to? What do you understand registered 16 reports to be? 17 A. I have no idea. 18 MR. KELLY: It's on here 19 (indicating). 20 A. I think it's -- I think -- well, 21 I'm not going to speculate. I don't know. 22 Q. All right. And then on the first 23 page, the second email on the first page is 24 from John to you and to Emil, and you must have 25 been talking about the RUS for the admixture</p>
<p style="text-align: right;">Page 291</p> <p>1 reference to the paper. 2 This is the first time at least 3 that I've seen where there is a specific 4 reference to what we ought to ask for is what 5 everybody seems to be totally interested in 6 which is IQ and ancestry. 7 A. I wouldn't have agreed to do the 8 study, the collaboration. 9 Q. Because? 10 A. I didn't want every line in my vita 11 to be like controversial race and IQ research, 12 and I'm pretty sure I put that in one of my 13 rebuttals or it's in my documentation. 14 MR. KELLY: That's enough. 15 THE WITNESS: Okay. Thank you. 16 Q. Then the first email says, "Hi all, 17 let's switch discussion to the above/non-school 18 email," which I think you make, I don't know, 19 is that a reference to your -- 20 A. Yeah, so me and John were 21 conversing in cs.com and then obviously Emil 22 sent this to the CSU email. 23 Q. Well, those other emails we have 24 just been through have all been to the CSU 25 email address.</p>	<p style="text-align: right;">Page 293</p> <p>1 DAR? 2 A. I don't know if it was an email. 3 Q. But here is the language of, and 4 it's have you ever compared this language to 5 what appears in the actual RUS? 6 A. I don't know if it's identical, but 7 this is for 19, the mental health one. 8 Q. Right. This is the 19090, right? 9 A. 070 maybe. 090, you're correct. 10 Q. So this is you've already submitted 11 the sex differences one. This is the admixture 12 one that makes -- and this makes sense because 13 we know that that one refers to mood disorder, 14 schizophrenia, and depression which is what's 15 quoted here, right? 16 A. Right. 17 Q. Okay. 18 - - - - - 19 (Thereupon, Deposition Exhibit 40, 20 an Email String, was marked for 21 purposes of identification.) 22 - - - - - 23 Q. All right. So this is much later 24 in time, right? 25 A. August 20th.</p>

<p style="text-align: right;">Page 294</p> <p>1 Q. Right, 2019, right?</p> <p>2 A. Correct.</p> <p>3 Q. And the first email in this thread</p> <p>4 begins on August 1st from NIH to you and Lisa</p> <p>5 Franklin, right?</p> <p>6 A. Bottom of the page, first page?</p> <p>7 Q. Yeah.</p> <p>8 A. Correct.</p> <p>9 Q. All right. And it's saying you</p> <p>10 need to do a project renewal or closeout for</p> <p>11 19090, right?</p> <p>12 A. Correct.</p> <p>13 Q. And that then the next thing, the</p> <p>14 next email, is you're sending it to Emil and</p> <p>15 John and saying, "Guys, what are we doing with</p> <p>16 this one?" Why were you asking what are you</p> <p>17 doing with this one?</p> <p>18 A. Should we renew it or close it.</p> <p>19 Q. Because?</p> <p>20 A. Well, we did -- I mean, we were</p> <p>21 focusing on the sex one initially, and then I</p> <p>22 think -- I don't know. We just didn't -- we</p> <p>23 didn't -- I didn't know what the answer was,</p> <p>24 should we renew it or close it. That's what I</p> <p>25 was asking.</p>	<p style="text-align: right;">Page 296</p> <p>1 A. Yeah, and I wanted to make the</p> <p>2 deadline, so what do we do with this, guys.</p> <p>3 Q. Okay. And this is at the point in</p> <p>4 which the Lasker paper has -- you've submitted</p> <p>5 the Lasker paper at or about this time, and I'm</p> <p>6 not sure if it was accepted at that point or</p> <p>7 not?</p> <p>8 A. That would be in the time frame, I</p> <p>9 agree.</p> <p>10 Q. So what was your consideration of</p> <p>11 whether it should be closed or renewed?</p> <p>12 A. It didn't really matter to me.</p> <p>13 This was before also the initial email from NIH</p> <p>14 so.</p> <p>15 Q. Yeah. Well, you never really</p> <p>16 focused your research or prepared a paper that</p> <p>17 focused on the mental health outcomes; did you?</p> <p>18 A. No. I don't remember if we</p> <p>19 analyzed it. Maybe we did, but I think</p> <p>20 schizophrenia might have been nothing worked.</p> <p>21 Q. So why not just close it out</p> <p>22 instead of renewing, and then you just have to</p> <p>23 deal with 19747 which does refer to IQ?</p> <p>24 A. Correct. I mean, I didn't know the</p> <p>25 answer, so I asked them.</p>
<p style="text-align: right;">Page 295</p> <p>1 Q. And the next email is also on</p> <p>2 August 19th from John to you.</p> <p>3 A. Uh-huh.</p> <p>4 Q. He says, "Sorry. That was somewhat</p> <p>5 of an email reply."</p> <p>6 A. Emil.</p> <p>7 Q. Emil. I'm sorry.</p> <p>8 A. You're good.</p> <p>9 Q. "Emil reply (i.e., tell you what to</p> <p>10 do)." "John's reply, (i.e., tell you what I</p> <p>11 will do). Let me prepare something, and I will</p> <p>12 get it to you by the end of the week. We will</p> <p>13 discuss then."</p> <p>14 A. Correct.</p> <p>15 Q. Did Emil reply in some other email</p> <p>16 to this?</p> <p>17 A. I don't remember.</p> <p>18 Q. Okay. And then you told him that</p> <p>19 you had until September 1st, right?</p> <p>20 A. That was probably the one year</p> <p>21 deadline for either renewing or closing it out.</p> <p>22 Q. Okay. And actually I think it's</p> <p>23 probably in the email below. In fact it is.</p> <p>24 You're told that you have to either renew or</p> <p>25 close it out by September 1st.</p>	<p style="text-align: right;">Page 297</p> <p>1 Q. Then what did they tell you to do</p> <p>2 then?</p> <p>3 A. So what did we do? Did we close it</p> <p>4 out?</p> <p>5 Q. You didn't close it out.</p> <p>6 A. So we renewed it then.</p> <p>7 Q. Did they say why renew it when</p> <p>8 nothing had happened?</p> <p>9 A. Well, no, not that I remember.</p> <p>10 Q. It sounds like you as the principal</p> <p>11 investigator are giving them a whole lot of</p> <p>12 decision power about what to do with the DARs</p> <p>13 and renewals, et cetera?</p> <p>14 A. Yeah. I had never done it before.</p> <p>15 Well, neither had they. It was a</p> <p>16 collaboration. I'm not saying that every time</p> <p>17 John said something, well, okay, let's do it.</p> <p>18 - - - - -</p> <p>19 (Thereupon, Deposition Exhibit 41,</p> <p>20 an Email String, was marked for</p> <p>21 purposes of identification.)</p> <p>22 - - - - -</p> <p>23 Q. So I'm not sure if this is -- the</p> <p>24 beginning of this email is the same reminder</p> <p>25 letter that you had received saying the you had</p>

<p style="text-align: right;">Page 298</p> <p>1 to close out or renew the mental health DAR.  2 A. And consistent with Table 1, was  3 that on July 15th?  4 Q. Okay.  5 A. I'd have to check.  6 Q. Okay. But my question is because  7 we just looked at a reminder about renewal, so  8 I'm not sure if this is the same one or not.  9 A. Okay.  10 Q. Do you know?  11 A. If you can find out which  12 application. Go to Table 1 and look at that  13 day, July 15th, because I think that's the date  14 we applied for one of the three.  15 Q. This clearly is about 19090.  16 A. Oh, I didn't see that here.  17 Q. The subject is about 19090.  18 A. Correct.  19 Q. After that reminder, and this is  20 August 28th, and now let's look --  21 A. August 18th?  22 Q. Because the Exhibit 40 email  23 correspondence which also deals with the what  24 are we going to do, renew or close out.  25 A. Correct.</p>	<p style="text-align: right;">Page 300</p> <p>1 your initial request or most recent renewal in  2 the space below including the potential  3 significance of any findings. Briefly describe  4 whether and how the data set was used including  5 referencing the data sets by name in your  6 summary. Please limit your summary to 6,000  7 characters."  8 That is the section of the renewal  9 request that says this is the information we  10 want to know from you. So you're writing that  11 to John. Is this you're asking him to prepare  12 that?  13 A. I don't know what he's talking  14 about here because Woodley wasn't involved in  15 this.  16 Q. But I'm talking about your email to  17 him which is about are we going to close out or  18 renew the 19090 project.  19 A. Yeah. I don't know. It  20 doesn't -- I don't know.  21 Q. Well, the middle email which is  22 John's response to you of the same date is, "B,  23 recall I am waiting for you to figure out which  24 DUC that was for. Please let me know which  25 projected I am supposed to describe progress</p>
<p style="text-align: right;">Page 299</p> <p>1 Q. Those are all dated between  2 August 1st, which you got a reminder letter on  3 August 1st so I guess this is a new one,  4 meaning Exhibit 41 is a new one, to the last  5 email here is August 20th, right, that's  6 Exhibit 40?  7 A. The last will be the first on the  8 page. It says August 19th if I'm looking at it  9 correctly.  10 Q. On Exhibit 40? Is that Exhibit 40?  11 MR. KELLY: Forty-one.  12 A. Maybe you meant 41?  13 Q. No, and it's August 20th.  14 A. I just saw August 19th.  15 Q. There is an August 19th, but the  16 last one, the last email.  17 A. Yeah. That's the same email.  18 You're correct.  19 Q. My point is that this is, the email  20 trail for Exhibit 40, is about a week before  21 the email trail of Exhibit 41?  22 A. Yes.  23 Q. And on August 28th you write to  24 John, "We need," and then you quote, "Please  25 summarize your research on this project since</p>	<p style="text-align: right;">Page 301</p> <p>1 on. Woodley, TCP Hispanic, the sex differences  2 one which we never touched. We have three or  3 four active. Some we renewed last December.  4 I've been asking you to check this for a week."  5 So what is he talking about  6 Woodley?  7 A. I don't know. I would say three is  8 the sex difference one we never touched. I  9 don't know what he means by Woodley.  10 Q. But he's waiting for you to figure  11 out what the DUC, which is the data use  12 certification, right?  13 A. Correct.  14 Q. That was for referencing 19090.  15 Did you have a DUC involving Woodley or TCP  16 Hispanic?  17 A. No. I mean, Woodley wasn't listed  18 on any of our applications.  19 Q. Did it concern you that he was  20 asking about DUCs that weren't applicable?  21 A. I'm not sure I understand that.  22 Q. You understand what?  23 A. Your question.  24 Q. Well, you're asking him to  25 collaborate with you on what the renewal or</p>

<p style="text-align: right;">Page 302</p> <p>1 close out --</p> <p>2 A. Correct.</p> <p>3 Q. -- of 19090 is going to be, and he</p> <p>4 responds saying tell me which one is it</p> <p>5 supposed to be about, and then he lists all of</p> <p>6 those things, none of which includes the mental</p> <p>7 health one, right?</p> <p>8 A. Yeah. I don't -- I don't know what</p> <p>9 he was getting at here.</p> <p>10 Q. And then you respond to him on</p> <p>11 August 28th saying it's the mental disorders</p> <p>12 one, right?</p> <p>13 A. Which implies to me that that's</p> <p>14 what we're talking about in the middle one.</p> <p>15 Q. Even though that wasn't the</p> <p>16 possibles list that he had about how they</p> <p>17 were --</p> <p>18 A. Possibles?</p> <p>19 Q. Well, the possibles of what he</p> <p>20 thought it might be referencing was Woodley,</p> <p>21 TCP Hispanic, neither of which seem to exist,</p> <p>22 and the sex differences one which we never</p> <p>23 touched, right?</p> <p>24 A. Yeah. I think he's asking me for</p> <p>25 clarification which -- I don't know. I'm not</p>	<p style="text-align: right;">Page 304</p> <p>1 Whereupon, counsel was requested to give</p> <p>2 instruction regarding the witness's review of</p> <p>3 the transcript pursuant to the Civil Rules.</p> <p>4</p> <p>5 SIGNATURE:</p> <p>6 Transcript review was requested pursuant to the</p> <p>7 applicable Rules of Civil Procedure.</p> <p>8</p> <p>9 TRANSCRIPT DELIVERY:</p> <p>10 Counsel was requested to give instruction</p> <p>11 regarding delivery date of transcript.</p> <p>12 Ms. Giffen did not order the</p> <p>13 transcript at this time.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 303</p> <p>1 going to speculate on that.</p> <p>2 Q. Okay.</p> <p>3 - - - - -</p> <p>4 (Thereupon, Deposition Exhibit 42,</p> <p>5 an Email String, was marked for</p> <p>6 purposes of identification.)</p> <p>7 - - - - -</p> <p>8 MR. KELLY: Karen, it's after 6:00</p> <p>9 now.</p> <p>10 MS. GIFFEN: Off the record.</p> <p>11 (Brief recess.)</p> <p>12 (Deposition adjourned at 6:18 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 305</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 The State of Ohio, )</p> <p>3 SS:</p> <p>4 County of Cuyahoga. )</p> <p>5</p> <p>6 I, Cynthia Sullivan, a Notary</p> <p>7 Public within and for the State of Ohio, duly</p> <p>8 commissioned and qualified, do hereby certify</p> <p>9 that the within named witness, BRYAN J. PESTA,</p> <p>10 was by me first duly sworn to testify the</p> <p>11 truth, the whole truth and nothing but the</p> <p>12 truth in the cause aforesaid; that the</p> <p>13 testimony then given by the above-referenced</p> <p>14 witness was by me reduced to stenotypy in the</p> <p>15 presence of said witness; afterwards</p> <p>16 transcribed, and that the foregoing is a true</p> <p>17 and correct transcription of the testimony so</p> <p>18 given by the above-referenced witness.</p> <p>19 I do further certify that this</p> <p>20 deposition was taken at the time and place in</p> <p>21 the foregoing caption specified and was</p> <p>22 completed without adjournment.</p> <p>23</p> <p>24</p> <p>25</p>



<p style="text-align: right;">Page 306</p> <p>1 I do further certify that I am not 2 a relative, counsel or attorney for either 3 party, or otherwise interested in the event of 4 this action. 5 IN WITNESS WHEREOF, I have hereunto 6 set my hand and affixed my seal of office at 7 Cleveland, Ohio, on this 13th day of 8 February, 2024. 9 10 11 12 13  14 Cynthia Sullivan, Notary Public 15 within and for the State of Ohio 16 17 My commission expires October 17, 2026. 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 308</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS 2 3 ASSIGNMENT REFERENCE NO: 6425934 CASE NAME: Pesta, Bryan J. v. Bloomberg, Laura Et Al. DATE OF DEPOSITION: 1/29/2024 4 WITNESS' NAME: Bryan J. Pesta , I 5 In accordance with the Rules of Civil Procedure, I have read the entire transcript of 6 my testimony or it has been read to me. 7 I have made no changes to the testimony as transcribed by the court reporter. 8 9 Date <u>Bryan J. Pesta , I</u> 10 Sworn to and subscribed before me, a Notary Public in and for the State and County, 11 the referenced witness did personally appear and acknowledge that: 12 13 They have read the transcript; They signed the foregoing Sworn Statement; and 14 Their execution of this Statement is of their free act and deed. 15 16 I have affixed my name and official seal this _____ day of _____, 20____. 17 18 Notary Public 19 Commission Expiration Date 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 307</p> <p>1 Veritext Legal Solutions 2 1100 Superior Ave Suite 1820 3 Cleveland, Ohio 44114 Phone: 216-523-1313 4 5 February 13, 2024 6 To: MR. KELLY 7 Case Name: Pesta, Bryan J. v. Bloomberg, Laura Et Al. 8 Veritext Reference Number: 6425934 9 Witness: Bryan J. Pesta , I Deposition Date: 1/29/2024 10 Dear Sir/Madam: 11 The deposition transcript taken in the above-referenced 12 matter, with the reading and signing having not been 13 expressly waived, has been completed and is available 14 for review and signature. Please call our office to 15 make arrangements for a convenient location to 16 accomplish this or if you prefer a certified transcript 17 can be purchased. 18 If the errata is not returned within thirty days of your 19 receipt of this letter, the reading and signing will be 20 deemed waived. 21 Sincerely, 22 Production Department 23 24 25 NO NOTARY REQUIRED IN CA</p>	<p style="text-align: right;">Page 309</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS 2 3 ASSIGNMENT REFERENCE NO: 6425934 CASE NAME: Pesta, Bryan J. v. Bloomberg, Laura Et Al. DATE OF DEPOSITION: 1/29/2024 4 WITNESS' NAME: Bryan J. Pesta , I 5 In accordance with the Rules of Civil Procedure, I have read the entire transcript of 6 my testimony or it has been read to me. 7 I have listed my changes on the attached Errata Sheet, listing page and line numbers as 8 well as the reason(s) for the change(s). 9 I request that these changes be entered as part of the record of my testimony. 10 11 I have executed the Errata Sheet, as well as this Certificate, and request and authorize 12 that both be appended to the transcript of my testimony and be incorporated therein. 13 14 Date <u>Bryan J. Pesta , I</u> 15 Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear 16 and acknowledge that: 17 They have read the transcript; They have listed all of their corrections 18 in the appended Errata Sheet; They signed the foregoing Sworn 19 Statement; and Their execution of this Statement is of 20 their free act and deed. 21 I have affixed my name and official seal 22 this _____ day of _____, 20____. 23 24 Notary Public 25 Commission Expiration Date</p>

<div>Page 310</div> <div>1           ERRATA SHEET</div> <div>2           VERITEXT LEGAL SOLUTIONS MIDWEST</div> <div>3           ASSIGNMENT NO: 1/29/2024</div> <div>4 PAGE/LINE(S) /       CHANGE       /REASON</div> <div>5 _____</div> <div>6 _____</div> <div>7 _____</div> <div>8 _____</div> <div>9 _____</div> <div>10 _____</div> <div>11 _____</div> <div>12 _____</div> <div>13 _____</div> <div>14 _____</div> <div>15 _____</div> <div>16 _____</div> <div>17 _____</div> <div>18 _____</div> <div>19 _____</div> <div>20 Date           Bryan J. Pesta , I</div> <div>21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____</div> <div>22 DAY OF _____, 20____.</div> <div>23 _____</div> <div>24           Notary Public</div> <div>25 _____</div> <div>Commission Expiration Date</div>	
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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